



Reprinted  
January 30, 2008

## HOUSE BILL No. 1360

DIGEST OF HB 1360 (Updated January 29, 2008 8:05 pm - DI 101)

**Citations Affected:** IC 4-6; IC 6-1.1; IC 20-24; IC 20-30; IC 23-2; IC 24-4.5; IC 24-5; IC 24-9; IC 25-34.1; IC 34-30; noncode.

**Synopsis:** Mortgage lending issues. Requires the homeowner protection unit (unit) within the attorney general's office to establish a toll free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. Requires the unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies. Requires the department of local government finance (DLGF) to establish an electronic system for the collection and storage of sales disclosure form data for real estate conveyances. Provides that the system must allow closing agents to input the sales disclosure form data into the system; and (2) submit the form electronically to a data base maintained by the DLGF. Requires the DLGF to make the data base accessible to county auditors, county and township assessors, and the legislative services agency. Requires the DLGF to establish electronic systems that automatically apply: (1) the mortgage deduction to a person entitled to the deduction; and (2) the homestead credit to a person entitled to the credit. Provides that the systems must allow closing agents to: (1) input information about the mortgage transaction that is the basis for the deduction or the credit; and (2) submit the form electronically to data bases maintained by the DLGF. Requires the DLGF to make the data

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**Effective:** Upon passage; July 1, 2008; January 1, 2009.

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**Bardon, Murphy, Bardon, Pierce**

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January 16, 2008, read first time and referred to Committee on Financial Institutions.  
January 24, 2008, reported — Do Pass.  
January 29, 2008, read second time, amended, ordered engrossed.

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HB 1360—LS 7029/DI 101+



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bases accessible to county auditors. Requires a county auditor to accept an electronic filing for the mortgage deduction or the homestead credit if the filing is complete. Prohibits a county auditor from requiring any other information or form of identification for a person to claim the mortgage deduction or the homestead credit. Requires the DLGF to establish an electronic system for the collection and storage of the: (1) names; and (2) license, registration, or certificate numbers; of certain professionals that participate in or assist with residential mortgage transactions. Provides that the system must allow closing agents to: (1) input the required information with respect to each professional involved in the transaction; and (2) submit the form electronically to a data base maintained by the DLGF. Requires the DLGF to make the data base accessible to: (1) the state agencies responsible for regulating the specified professionals; and (2) the homeowner protection unit in the attorney general's office. For residential mortgage transactions that close after June 30, 2008, and before January 1, 2010, requires a closing agent to do the following at the time of closing: (1) In the case of a first lien purchase money mortgage transaction, provide the customer with the sales disclosure form prescribed by the DLGF and the applications for the homestead credit and the mortgage deduction. (2) In the case of a refinancing, provide the customer with the application for the mortgage deduction. (3) Require the customer to complete and sign the form or forms provided. (3) Collect the signed and completed forms for filing. (4) Inform the customer of other specified property tax deductions by providing the customer with a form prescribed by the DLGF that describes the deductions. Requires the closing agent to file the signed forms with the appropriate county auditor. For a residential mortgage transaction that closes after December 31, 2009, requires a closing agent to input and submit the following information to the appropriate data bases maintained by the DLGF, as applicable: (1) Information to enable the customer to obtain the mortgage deduction and the homestead credit. (2) Sales disclosure form data. (4) The names and license, certificate, or registration numbers of specified professionals involved in the transaction. Specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers shall include a national criminal history background check by the Federal Bureau of Investigation (FBI). Specifies that the securities commissioner (commissioner) shall require each: (1) equitable owner of a loan brokerage business; (2) director, manager, or officer of an applicant for licensure as a loan broker; and (3) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. Prohibits the commissioner from releasing the results of a national criminal history background check to a private entity. Allows the commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. Increases the amount of the bond that a licensed loan broker must maintain with the commissioner from \$50,000 to \$100,000. Eliminates the exemption from the loan broker statute for persons authorized to make loans on behalf of, or insured by, certain federal agencies. Specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. Prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. Prohibits a person from performing specified acts in connection with a contract for the services of a loan broker. Provides that first lien

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mortgage transactions are subject to regulation under the Uniform Consumer Credit Code (UCCC). Requires a creditor, a mortgage servicer, or an agent of a creditor to acknowledge a written offer made in connection with a proposed short sale of property that is subject to a mortgage that is at least 10 days delinquent. Provides that the acknowledgment must be provided not later than 10 business days after the date of the offer. Requires the creditor, servicer, or agent to accept or reject the short sale offer not later than 20 business days after receipt of the offer. For an adjustable rate mortgage, requires a creditor to provide a one page disclosure document that provides the following information: (1) The mortgage transaction's fully indexed rate. (2) The maximum monthly payment that could be required under the terms of the mortgage transaction, including amounts owed for taxes and insurance, if the creditor will establish an escrow account for taxes and insurance. Provides that a creditor is not liable to the debtor or any other person if the estimate of monthly taxes and insurance provided in the disclosure document differs from the actual taxes and insurance owed at any time during the mortgage. Specifies that a violation of the home loan practices act is a deceptive act subject to action by the attorney general. For a deceptive act involving home loan practices, increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator. Provides that any civil penalties collected by the attorney general shall be deposited in the home owner protection unit account in the general fund. Prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not first conduct a reasonable inquiry into the prospective borrower's creditworthiness. Provides that if a creditor conducts a reasonable inquiry, the creditor is not liable if the borrower later defaults on a home loan issued by the creditor. Requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing. Provides that if terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract. Increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract. Enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony. Increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from \$10,000 to \$20,000. Requires the real estate appraiser licensure and certification board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. Prohibits the board from releasing the results of a national criminal history background check to a private entity. Requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. Requires the Indiana housing and community development authority to provide, not later than November 1, 2008, a report to the legislative council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or

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disproportionately affected by mortgage foreclosures. Requires the securities commissioner and the director of the department of financial institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC. Repeals provisions that exclude mortgage transactions from the UCCC. Beginning with the school year that begins in 2010, requires school corporations and accredited nonpublic schools to include in their curricula for grades 9 through 12 instruction designed to: (1) increase students' awareness of consumer transactions, including mortgage transactions; and (2) foster personal financial responsibility. Provides that a school corporation or an accredited nonpublic school may provide the instruction by integrating it into its mathematics curriculum. Requires the department of education and the department of financial institutions to develop guidelines to assist teachers assigned to provide the instruction.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1360

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A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: **Sec. 3.5. (a) Not later than July 1, 2008, the unit**  
4 **shall establish a toll free telephone number to receive calls from**  
5 **persons having information about suspected fraudulent:**  
6 (1) **mortgage lending practices;**  
7 (2) **real estate appraisals; or**  
8 (3) **other practices;**  
9 **involving residential real estate transactions.**  
10 (b) **The toll free telephone number required by this section shall**  
11 **be staffed by:**  
12 (1) **employees or investigators of the unit who have knowledge**  
13 **of the laws concerning:**  
14 (A) **mortgage lending practices;**  
15 (B) **real estate appraisals; or**  
16 (C) **other practices;**  
17 **involving residential real estate transactions;**



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(2) representatives of any of the entities described in section 4(a)(8) through 4(a)(10) of this chapter who have knowledge of the laws concerning:

- (A) mortgage lending practices;
  - (B) real estate appraisals; or
  - (C) other practices;
- involving residential real estate transactions; or
- (3) a combination of persons described in subdivisions (1) and (2).

The attorney general shall designate persons to staff the toll free telephone number as required by this subsection.

(c) The persons designated by the attorney general under subsection (b) to staff the toll free telephone number required by this section shall ensure that any information received from callers to the telephone number is shared with any entity described in section 4 of this chapter that has jurisdiction over the matter reported. The unit shall establish uniform procedures for:

- (1) responding to calls received;
- (2) protecting:
  - (A) the anonymity of callers who wish to report information anonymously; or
  - (B) the identity of callers who request that their identity not be disclosed;
- (3) documenting and verifying information reported by callers; and
- (4) transmitting reported information to the appropriate entities described in section 4 of this chapter.

(d) The unit shall publicize the availability of the toll free telephone number established under this section in a manner reasonably designed to reach members of the public.

SECTION 2. IC 4-6-12-9, AS AMENDED BY P.L.64-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.

(b) The homeowner protection unit account consists of:

- (1) fees collected under IC 24-9-9; and
- (2) civil penalties collected under IC 24-5-0.5-4(l)(3).

(c) The expenses of administering the homeowner protection unit account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the homeowner protection unit account not currently needed to meet the obligations of

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the account in the same manner as other public money may be invested.

(e) Money in the homeowner protection unit account at the end of a state fiscal year does not revert to the state general fund.

SECTION 3. IC 6-1.1-5.5-3, AS AMENDED BY P.L.219-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) For purposes of this section, "party" includes:

(1) a seller of property that is exempt under the seller's ownership; or

(2) a purchaser of property that is exempt under the purchaser's ownership;

from property taxes under IC 6-1.1-10.

(b) ~~Before~~ **Except as provided in section 3.5 of this chapter, in addition to** filing a conveyance document with the county auditor under IC 6-1.1-5-4, all the parties to the conveyance must do the following:

(1) Complete and sign a sales disclosure form as prescribed by the department of local government finance under section 5 of this chapter. All the parties may sign one (1) form, or if all the parties do not agree on the information to be included on the completed form, each party may sign and file a separate form.

(2) Before filing a sales disclosure form with the county auditor, submit the sales disclosure form to the county assessor. The county assessor must review the accuracy and completeness of each sales disclosure form submitted immediately upon receipt of the form and, if the form is accurate and complete, stamp the form as eligible for filing with the county auditor and return the form to the appropriate party for filing with the county auditor. If multiple forms are filed in a short period, the county assessor shall process the forms as quickly as possible. For purposes of this subdivision, a sales disclosure form is considered to be accurate and complete if:

(A) the county assessor does not have substantial evidence when the form is reviewed under this subdivision that information in the form is inaccurate; and

(B) the form:

(i) substantially conforms to the sales disclosure form prescribed by the department of local government finance under section 5 of this chapter; and

(ii) is submitted to the county assessor in a format usable to the county assessor.

(3) File the sales disclosure form with the county auditor.

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(c) Except as provided in subsection (d), the auditor shall forward each sales disclosure form to the county assessor. The county assessor shall retain the forms for five (5) years. The county assessor shall forward the sales disclosure form data to the department of local government finance and the legislative services agency in an electronic format specified jointly by the department of local government finance and the legislative services agency. The county assessor shall forward a copy of the sales disclosure forms to the township assessors in the county. The forms may be used by the county assessing officials, the department of local government finance, and the legislative services agency for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized purpose.

(d) In a county containing a consolidated city, the auditor shall forward the sales disclosure form to the appropriate township assessor. The township assessor shall forward the sales disclosure form to the department of local government finance and the legislative services agency in an electronic format specified jointly by the department of local government finance and the legislative services agency. The forms may be used by the county assessing officials, the department of local government finance, and the legislative services agency for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized purpose.

(e) If a sales disclosure form includes the telephone number or Social Security number of a party, the telephone number or Social Security number is confidential.

(f) County assessing officials and other local officials may not establish procedures or requirements concerning sales disclosure forms that substantially differ from the procedures and requirements of this chapter.

SECTION 4. IC 6-1.1-5.5-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3.5. (a) This section applies to a conveyance that:**

**(1) is a single family residential:**

**(A) first lien purchase money mortgage transaction; or**

**(B) refinancing transaction; and**

**(2) is closed after December 31, 2009.**

**(b) Not later than September 1, 2009, the department of local government finance shall establish and maintain an electronic system for the collection and storage of the sales disclosure form**

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data set forth in section 5(a) of this chapter with respect to a conveyance to which this section applies.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to:

(A) input the sales disclosure form data set forth in section 5(a) of this chapter with respect to the transaction; and

(B) submit the form electronically to a data base maintained by the department of local government finance.

(d) Subject to subsection (e), the department shall make the information stored in the data base described in subsection (c)(2)(B) accessible to:

(1) county auditors;

(2) county assessors;

(3) township assessors;

(4) the legislative services agency; and

(5) the department;

for the purposes authorized by section 3(c) and 3(d) of this chapter.

(e) If the sales disclosure form data submitted by a closing agent under subsection (c)(2)(B) includes the telephone number or the Social Security number of a party, the telephone number or the Social Security number is confidential.

SECTION 5. IC 6-1.1-5.5-5, AS AMENDED BY P.L.154-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) The department of local government finance shall prescribe a sales disclosure form for use under this chapter. The form prescribed by the department of local government finance must include at least the following information:

(1) The key number of the parcel (as defined in IC 6-1.1-1-8.5).

(2) Whether the entire parcel is being conveyed.

(3) The address of the property.

(4) The date of the execution of the form.

(5) The date the property was transferred.

(6) Whether the transfer includes an interest in land or improvements, or both.

(7) Whether the transfer includes personal property.

(8) An estimate of any personal property included in the transfer.

(9) The name, address, and telephone number of:

(A) each transferor and transferee; and

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- 1 (B) the person that prepared the form.
- 2 (10) The mailing address to which the property tax bills or other
- 3 official correspondence should be sent.
- 4 (11) The ownership interest transferred.
- 5 (12) The classification of the property (as residential, commercial,
- 6 industrial, agricultural, vacant land, or other).
- 7 (13) The total price actually paid or required to be paid in
- 8 exchange for the conveyance, whether in terms of money,
- 9 property, a service, an agreement, or other consideration, but
- 10 excluding tax payments and payments for legal and other services
- 11 that are incidental to the conveyance.
- 12 (14) The terms of seller provided financing, such as interest rate,
- 13 points, type of loan, amount of loan, and amortization period, and
- 14 whether the borrower is personally liable for repayment of the
- 15 loan.
- 16 (15) Any family or business relationship existing between the
- 17 transferor and the transferee.
- 18 (16) Other information as required by the department of local
- 19 government finance to carry out this chapter.

20 If a form under this section includes the telephone number or the Social

21 Security number of a party, the telephone number or the Social Security

22 number is confidential.

23 (b) The instructions for completing the form described in subsection

24 (a) must include the information described in ~~IC 6-1.1-12-43(c)(1).~~

25 **IC 6-1.1-12-43(b)(1).**

26 SECTION 6. IC 6-1.1-5.5-6, AS AMENDED BY P.L.154-2006,

27 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

28 JULY 1, 2008]: Sec. 6. (a) **Subject to subsection (c),** the county

29 auditor may not **refuse to** accept a conveyance document ~~if:~~ **solely**

30 **because:**

- 31 (1) the sales disclosure form signed by all the parties and attested
- 32 as required under section 9 of this chapter is not included with the
- 33 document; ~~or~~
- 34 (2) the sales disclosure form does not contain the information
- 35 described in section 5(a) of this chapter; **or**
- 36 **(3) in the case of a conveyance to which section 3.5 of this**
- 37 **chapter applies:**

- 38 **(A) the closing agent fails to submit an electronic form in**
- 39 **accordance with section 3.5(c)(2)(B) of this chapter; or**
- 40 **(B) the electronic form submitted by the closing agent**
- 41 **under section 3.5(c)(2)(B) of this chapter is incomplete or**
- 42 **determined by any official or agency described in section**

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**3.5(d) of this chapter to be inaccurate.**

(b) **Subject to subsection (c), the county recorder shall not may not refuse to record a conveyance document without evidence that the parties have filed a completed sales disclosure form with the county auditor; solely on the basis of any of the reasons set forth in subsection (a).**

(c) **Notwithstanding subsections (a) and (b), if any of the circumstances described in subsection (a)(1) through (a)(3) apply:**

**(1) a party to the conveyance who is required to file a sales disclosure form under section 3 of this chapter:**

**(A) is not relieved of the party's duty to file or correct the sales disclosure form required by this chapter; and**

**(B) is subject to the penalties set forth in section 12 of this chapter; and**

**(2) a closing agent who is required to submit an electronic sales disclosure form under section 3.5(c)(2)(B) of the chapter:**

**(A) is not relieved of the closing agent's duty to submit or correct the electronic sales disclosure form required by section 3.5(c)(2)(B) this chapter; and**

**(B) is subject to the penalties set forth in section 12(f) of this chapter.**

SECTION 7. IC 6-1.1-5.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. **(a) Except as provided in subsection (b), a person who signs a sales disclosure form shall attest in writing and under penalties of perjury that to the best of the person's knowledge and belief the information contained in the sales disclosure form is true and correct.**

**(b) An electronic sales disclosure form that is submitted in accordance with section 3.5(c)(2)(B) of this chapter is subject to any verification requirements that the department may prescribe by rule adopted under IC 4-22-2.**

SECTION 8. IC 6-1.1-5.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) **Except as provided in subsection (f), a party to a conveyance who:**

**(1) is required to file a sales disclosure form under this chapter; and**

**(2) fails to file a sales disclosure form at the time and in the manner required by this chapter;**

**is subject to a penalty in the amount determined under subsection (b).**

**(b) The amount of the penalty under subsection (a) is the greater of:**

**(1) one hundred dollars (\$100); or**

**(2) twenty-five thousandths percent (0.025%) of the sale price of**

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the real property transferred under the conveyance document.

(c) **Except as provided in subsection (f)**, the township assessor in a county containing a consolidated city, or the county assessor in any other county, shall:

- (1) determine the penalty imposed under this section;
- (2) assess the penalty to the party to a conveyance; and
- (3) notify the party to the conveyance that the penalty is payable not later than thirty (30) days after notice of the assessment.

(d) **Except as provided in subsection (f)**, the county auditor shall:

- (1) collect the penalty imposed under this section;
- (2) deposit penalty collections as required under section 4 of this chapter; and
- (3) notify the county prosecuting attorney of delinquent payments.

(e) **Except as provided in subsection (f)**, the county prosecuting attorney shall initiate an action to recover a delinquent penalty under this section. In a successful action against a person for a delinquent penalty, the court shall award the county prosecuting attorney reasonable attorney's fees.

(f) **A closing agent who:**

- (1) **is required to submit an electronic sales disclosure form under section 3.5(c)(2)(B) of this chapter; and**
- (2) **fails to submit the electronic sales disclosure form at the time and in the manner prescribed by the department of local government finance;**

**is subject to the penalty set forth in IC 6-1.1-12-43(h).**

SECTION 9. IC 6-1.1-12-2, AS AMENDED BY P.L.183-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Except as provided in section 17.8 of this chapter **and subject to subsection (d)**, a person who desires to claim the deduction provided by section 1 of this chapter must file a statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the real property, mobile home not assessed as real property, or manufactured home not assessed as real property is located. With respect to real property, the statement must be filed during the twelve (12) months before June 11 of each year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. In

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1 addition to the statement required by this subsection, a contract buyer  
 2 who desires to claim the deduction must submit a copy of the recorded  
 3 contract or recorded memorandum of the contract, which must contain  
 4 a legal description sufficient to meet the requirements of IC 6-1.1-5,  
 5 with the first statement that the buyer files under this section with  
 6 respect to a particular parcel of real property. Upon receipt of the  
 7 statement and the recorded contract or recorded memorandum of the  
 8 contract, the county auditor shall assign a separate description and  
 9 identification number to the parcel of real property being sold under the  
 10 contract.

11 (b) The statement referred to in subsection (a) must be verified  
 12 under penalties for perjury, and the statement must contain the  
 13 following information:

14 (1) The balance of the person's mortgage or contract indebtedness  
 15 on the assessment date of the year for which the deduction is  
 16 claimed.

17 (2) The assessed value of the real property, mobile home, or  
 18 manufactured home.

19 (3) The full name and complete residence address of the person  
 20 and of the mortgagee or contract seller.

21 (4) The name and residence of any assignee or bona fide owner or  
 22 holder of the mortgage or contract, if known, and if not known,  
 23 the person shall state that fact.

24 (5) The record number and page where the mortgage, contract, or  
 25 memorandum of the contract is recorded.

26 (6) A brief description of the real property, mobile home, or  
 27 manufactured home which is encumbered by the mortgage or sold  
 28 under the contract.

29 (7) If the person is not the sole legal or equitable owner of the real  
 30 property, mobile home, or manufactured home, the exact share of  
 31 the person's interest in it.

32 (8) The name of any other county in which the person has applied  
 33 for a deduction under this section and the amount of deduction  
 34 claimed in that application.

35 (c) **Except as provided in subsection (d)**, the authority for signing  
 36 a deduction application filed under this section may not be delegated  
 37 by the real property, mobile home, or manufactured home owner or  
 38 contract buyer to any person except upon an executed power of  
 39 attorney. The power of attorney may be contained in the recorded  
 40 mortgage, contract, or memorandum of the contract, or in a separate  
 41 instrument.

42 (d) As used in this subsection, "transaction" has the meaning set

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1 forth in section 43(a)(4) of this chapter. Not later than September  
 2 1, 2009, the department of local government finance shall establish  
 3 and maintain an electronic system that automatically applies the  
 4 deduction provided by section 1 of this chapter to a person entitled  
 5 to the deduction provided by section 1 of this chapter. The system  
 6 established by the department under this subsection must include  
 7 a form that, with respect to a transaction that is closed after  
 8 December 31, 2009:

9 (1) is uniformly accessible in an electronic format to the  
 10 closing agent (as defined in section 43(a)(2) of this chapter) in  
 11 the transaction that is the basis for the person's eligibility for  
 12 the deduction provided by section 1 of this chapter; and

13 (2) allows the closing agent to:

14 (A) input the information concerning the transaction that  
 15 is the basis for the person's eligibility for the deduction  
 16 provided by section 1 of this chapter; and

17 (B) submit the form electronically to a data base  
 18 maintained by the department of local government finance.

19 The department shall make the data base described in subdivision  
 20 (2)(B) accessible to the county auditor in each county in Indiana.  
 21 If the form submitted by a closing agent under subdivision (2)(B)  
 22 is complete, the county auditor in the county in which the real  
 23 property is located must accept the form and apply the deduction  
 24 in accordance with section 17.8(c) of this chapter. The county  
 25 auditor may not require the closing agent, the person entitled to  
 26 the deduction, or any other person to provide any other  
 27 information or form of identification for the person entitled to the  
 28 deduction under section 1 of chapter to receive the deduction. If the  
 29 form submitted by a closing agent under subdivision (2)(B)  
 30 includes the telephone number or Social Security number of any  
 31 individual, the telephone number or Social Security number is  
 32 confidential.

33 SECTION 10. IC 6-1.1-12-42.5 IS ADDED TO THE INDIANA  
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 35 [EFFECTIVE JULY 1, 2008]: Sec. 42.5. (a) This section applies to a  
 36 transaction that:

37 (1) is a single family residential:

38 (A) first lien purchase money mortgage transaction; or

39 (B) refinancing transaction; and

40 (2) is closed after December 31, 2009.

41 (b) Not later than September 1, 2009, the department of local  
 42 government finance shall establish and maintain an electronic

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1 system for the collection and storage of the following information  
 2 concerning any of the following persons that have participated in  
 3 or assisted with a transaction to which this section applies, or that  
 4 will participate in or assist with a transaction to which this section  
 5 applies:

6 (1) The name and license number (under IC 23-2-5) of each  
 7 loan brokerage business involved in the transaction.

8 (2) The name and registration number (under IC 23-2-5) of  
 9 each originator involved in the transaction.

10 (3) The name and license number (under IC 25-34.1) of each:

11 (A) principal broker; and

12 (B) salesperson or broker-salesperson, if any;

13 involved in the transaction.

14 (4) The name and certificate number (under IC 27-7-3) of  
 15 each title insurance company involved in the transaction.

16 (5) The name and license number (under IC 27-1-15.6) of each  
 17 title insurance agent involved in the transaction.

18 (6) The name and:

19 (A) license or certificate number (under IC 25-34.1-3-8) of  
 20 each licensed or certified real estate appraiser; or

21 (B) license number (under IC 25-34.1) of each broker;  
 22 who appraises the property that is the subject of the  
 23 transaction.

24 (7) The name of the mortgagee and, if the mortgagee is  
 25 required to be licensed under IC 24-4.5-3-502, the license  
 26 number of the mortgagee.

27 (c) The system established by the department under this section  
 28 must include a form that:

29 (1) is uniformly accessible in an electronic format to the  
 30 closing agent (as defined in section 43(a)(2) of this chapter) in  
 31 the transaction; and

32 (2) allows the closing agent to:

33 (A) input the information described in subsection (b) with  
 34 respect to each person described in subsection (b) that  
 35 participates in or assists with the transaction, to the extent  
 36 determinable; and

37 (B) submit the form electronically to a data base  
 38 maintained by the department of local government finance.

39 (d) Subject to subsection (e), the department shall make the  
 40 information stored in the data base described in subsection  
 41 (c)(2)(B) accessible to:

42 (1) each entity described in IC 4-6-12-4; and

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(2) the homeowner protection unit established under IC 4-6-12-2.

(e) The department, a closing agent who submits under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

- (1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and
- (2) contained in the data base described in subsection (c)(2)(B);

except to the extent required or authorized by state or federal law.

SECTION 11. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For purposes of this section:

(1) "benefit" refers to:

- (A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or
- (B) the homestead credit under IC 6-1.1-20.9-2.

(2) "closing agent" means a person that closes a transaction;

(3) "customer" means an individual who obtains a loan in a transaction; and

(4) "transaction" means a single family residential:

- (A) first lien purchase money mortgage transaction; or
- (B) refinancing transaction.

~~(b) Before closing a transaction after December 31, 2004, a closing agent must provide to the customer the form referred to in subsection (c).~~

~~(c) Before June 1, 2004;~~ (b) The department of local government finance shall prescribe ~~the a~~ form to be provided by closing agents to customers under subsection ~~(b):~~ (d)(1). The department shall make the form available to closing agents, county assessors, county auditors, and county treasurers in hard copy and electronic form. County assessors, county auditors, and county treasurers shall make the form available to the general public. The form must:

(1) on one (1) side:

- (A) list each benefit;
- (B) list the eligibility criteria for each benefit; and
- (C) indicate that a new application for a deduction under section 1 of this chapter is required when residential real property is refinanced;

(2) on the other side indicate:

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- 1 (A) each action by; and  
 2 (B) each type of documentation from;  
 3 the customer required to file for each benefit; and  
 4 (3) be printed in one (1) of two (2) or more colors prescribed by  
 5 the department of local government finance that distinguish the  
 6 form from other documents typically used in a closing. ~~referred to~~  
 7 ~~in subsection (b):~~  
 8 ~~(d)~~ (c) A closing agent:  
 9 (1) may reproduce the form referred to in subsection ~~(c)~~; (b);  
 10 (2) in reproducing the form, must use a print color prescribed by  
 11 the department of local government finance; and  
 12 (3) is not responsible for the content of the form referred to in  
 13 subsection ~~(c)~~ (b) and shall be held harmless by the department  
 14 of local government finance from any liability for the content of  
 15 the form.  
 16 (d) A closing agent must do the following with respect to a  
 17 transaction that is closed after June 30, 2008, and before January  
 18 1, 2010:  
 19 (1) At the time of closing:  
 20 (A) provide the customer with:  
 21 (i) if the transaction is a first lien purchase money  
 22 mortgage transaction, the sales disclosure form  
 23 prescribed by the department under IC 6-1.1-5.5-5, the  
 24 form prescribed by the department under  
 25 IC 6-1.1-20.9-3 to allow a person to claim the credit  
 26 provided by IC 6-1.1-20.9-2, and the form prescribed by  
 27 the department under section 2(a) of this chapter to  
 28 allow a person to claim the deduction provided by  
 29 section 1 of this chapter; or  
 30 (ii) if the transaction is a refinancing transaction, the  
 31 form prescribed by the department under section 2(a) of  
 32 this chapter to allow a person to claim the deduction  
 33 provided by section 1 of this chapter.  
 34 (B) require the customer to complete and sign the forms  
 35 provided under clause (A); and  
 36 (C) collect the forms signed and completed under clause  
 37 (B) for filing under subsection (e).  
 38 (2) At the time of the closing, inform the customer of the  
 39 deductions available under sections 9, 11, 13, 14, 16, 17.4, 26,  
 40 29, 31, 33, and 34 of this chapter by providing the customer  
 41 with the form prescribed by the department under subsection  
 42 (b).

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1 (e) This subsection applies to a transaction that is closed after  
 2 June 30, 2008, and before January 1, 2010. The closing agent shall  
 3 file the forms completed and signed by the customer under  
 4 subsection (d)(1)(B) as follows:

5 (1) In the case of a first lien purchase money mortgage  
 6 transaction, the closing agent shall file:

7 (A) the signed sales disclosure form with the appropriate  
 8 county assessor and county auditor in accordance with  
 9 IC 6-1.1-5-3;

10 (B) the signed mortgage deduction form in accordance  
 11 with section 2(a) of the chapter; and

12 (C) the signed homestead credit form in accordance with  
 13 IC 6-1.1-20.9-3.

14 (2) In the case of a refinancing transaction, the closing agent  
 15 shall file the signed mortgage deduction form in accordance  
 16 with section 2(a) of this chapter.

17 (f) This subsection applies to a transaction that is closed after  
 18 December 31, 2009. The closing agent shall do the following:

19 (1) At the time of the closing, inform the customer of the  
 20 deductions available under sections 9, 11, 13, 14, 16, 17.4, 26,  
 21 29, 31, 33, and 34 of this chapter by providing the customer  
 22 with the form prescribed by the department under subsection  
 23 (b).

24 (2) As soon as possible after the closing, and within the time  
 25 prescribed by the department of local government finance:

26 (A) for a transaction that is a first lien purchase money  
 27 mortgage transaction:

28 (i) input the electronic sales disclosure form data and  
 29 submit the electronic sales disclosure form in accordance  
 30 with IC 6-1.1-5.5-3.5(c)(2);

31 (ii) input the information and submit the form described  
 32 in IC 6-1.1-20.9-3(d)(2) to enable the customer to receive  
 33 the credit provided by IC 6-1.1-20.9-2;

34 (iii) input the information and submit the form described  
 35 in section 2(d)(2) of this chapter to enable the customer  
 36 to receive the deduction provided by section (1) of this  
 37 chapter; and

38 (iv) input the information and submit the form described  
 39 in IC 6-1.1-12-42.5(c)(2); and

40 (B) for a refinancing transaction:

41 (i) input the information and submit the form described  
 42 in section 2(d)(2) of this chapter to enable the customer

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1 to receive the deduction provided by section (1) of this  
2 chapter; and

3 (ii) input the information and submit the form described  
4 in IC 6-1.1-12-42.5(c)(2), to the extent applicable.

5 ~~(e)~~ (g) A closing agent to which this section applies shall document  
6 its the closing agent's compliance with this section with respect to  
7 each transaction in the form of verification of compliance signed by the  
8 customer.

9 ~~(f)~~ (h) A closing agent is subject to a civil penalty of twenty-five  
10 dollars (\$25) for each instance in which the closing agent fails to  
11 comply with this section with respect to a customer. The penalty:

12 (1) may be enforced by the state agency that has administrative  
13 jurisdiction over the closing agent in the same manner that the  
14 agency enforces the payment of fees or other penalties payable to  
15 the agency; and

16 (2) shall be paid into the property tax replacement fund.

17 (i) A closing agent is not liable for any other damages claimed by a  
18 customer because of:

19 (1) the closing agent's mere failure to provide ~~the an~~ appropriate  
20 document to the customer **under this section;**

21 (2) **with respect to a transaction that is closed after June 30,**  
22 **2008, and before January 1, 2010, the closing agent's failure**  
23 **to file a document under subsection (e);**

24 (3) **with respect to a transaction that is closed after December**  
25 **31, 2009, the closing agent's failure to input any information**  
26 **or submit any form described in subsection (f)(2); or**

27 (4) **any determination made with respect to a customer's**  
28 **eligibility for a benefit.**

29 ~~(g)~~ (j) The state agency that has administrative jurisdiction over a  
30 closing agent shall:

31 (1) examine the closing agent to determine compliance with this  
32 section; and

33 (2) impose and collect penalties under subsection ~~(f)~~ (h).

34 SECTION 12. IC 6-1.1-20.9-3, AS AMENDED BY P.L.183-2007,  
35 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 UPON PASSAGE]: Sec. 3. (a) **Subject to subsection (e)**, an individual  
37 who desires to claim the credit provided by section 2 of this chapter  
38 must file a certified statement in duplicate, on forms prescribed by the  
39 department of local government finance, with the auditor of the county  
40 in which the homestead is located. The statement shall include the  
41 parcel number or key number of the real estate and the name of the  
42 city, town, or township in which the real estate is located. With respect

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to real property, the statement must be filed during the twelve (12) months before June 11 of the year prior to the first year for which the person wishes to obtain the credit for the homestead. With respect to a mobile home that is not assessed as real property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of the first year for which the individual wishes to obtain the credit. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. The statement applies for that first year and any succeeding year for which the credit is allowed.

(b) The certified statement referred to in subsection (a) shall contain the name of any other county and township in which the individual owns or is buying real property.

(c) If an individual who is receiving the credit provided by this chapter changes the use of the individual's real property, so that part or all of that real property no longer qualifies for the homestead credit provided by this chapter, the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use within sixty (60) days after the date of that change. An individual who changes the use of the individual's real property and fails to file the statement required by this subsection is liable for the amount of the credit the individual was allowed under this chapter for that real property.

(d) An individual who receives the credit provided by section 2 of this chapter for property that is jointly held with another owner in a particular year and remains eligible for the credit in the following year is not required to file a statement to reapply for the credit following the removal of the joint owner if:

- (1) the individual is the sole owner of the property following the death of the individual's spouse;
- (2) the individual is the sole owner of the property following the death of a joint owner who was not the individual's spouse; or
- (3) the individual is awarded sole ownership of property in a divorce decree.

**(e) As used in this subsection, "transaction" has the meaning set forth in section 43(a)(4)(A) of this chapter. Not later than September 1, 2009, the department of local government finance shall establish and maintain an electronic system that automatically applies the credit provided by section 2 of this chapter to a person entitled to the credit provided by section 2 of this chapter. The system established by the department under this subsection must include a form that, with respect to a transaction**

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that is closed after December 31, 2009:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in section 43(a)(2) of this chapter) in the transaction that is the basis for the person's eligibility for the credit provided by section 2 of this chapter; and

(2) allows the closing agent to:

(A) input the information concerning the transaction that is the basis for the person's eligibility for the credit provided by section 2 of this chapter; and

(B) submit the form electronically to a data base maintained by the department of local government finance.

The department shall make the data base described in subdivision (2)(B) accessible to the county auditor in each county in Indiana. If the form submitted by a closing agent under subdivision (2)(B) is complete, the county auditor in the county in which the real property is located must accept the form and apply the credit in accordance with section 2(f) of this chapter. The county auditor may not require the closing agent, the person entitled to the credit, or any other person to provide any other information or form of identification for the person entitled to the credit under section 2 of chapter to receive the credit. If the form submitted by a closing agent under subdivision (2)(B) includes the telephone number or Social Security number of any individual, the telephone number or Social Security number is confidential.

SECTION 13. IC 20-24-8-5, AS AMENDED BY P.L.2-2006, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The following statutes and rules and guidelines adopted under the following statutes apply to a charter school:

- (1) IC 5-11-1-9 (required audits by the state board of accounts).
- (2) IC 20-39-1-1 (unified accounting system).
- (3) IC 20-35 (special education).
- (4) IC 20-26-5-10 and IC 20-28-5-9 (criminal history).
- (5) IC 20-26-5-6 (subject to laws requiring regulation by state agencies).
- (6) IC 20-28-7-14 (void teacher contract when two (2) contracts are signed).
- (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- (8) IC 20-28-10-14 (teacher freedom of association).
- (9) IC 20-28-10-17 (school counselor immunity).
- (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7, IC 20-28-8, IC 20-28-9, and IC 20-28-10.



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- (11) IC 20-33-2 (compulsory school attendance).
- (12) IC 20-33-3 (limitations on employment of children).
- (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student due process and judicial review).
- (14) IC 20-33-8-16 (firearms and deadly weapons).
- (15) IC 20-34-3 (health and safety measures).
- (16) IC 20-33-9 (reporting of student violations of law).
- (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative observances).
- (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8, or any other statute, rule, or guideline related to standardized testing (assessment programs, including remediation under the assessment programs).
- (19) IC 20-33-7 (parental access to education records).
- (20) IC 20-31 (accountability for school performance and improvement).
- (21) Beginning with the school year that begins in the calendar year beginning January 1, 2010, IC 20-30-5-19 (instruction concerning consumer transactions and personal financial responsibility).**

SECTION 14. IC 20-30-5-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 19. (a) Beginning with the school year that begins in the calendar year beginning January 1, 2010, each school corporation (including each charter school) and each nonpublic school that voluntarily has become accredited under IC 20-19-2-8 shall include in its curriculum for all students in grades 9 through 12 instruction designed to:**

- (1) increase students' awareness of certain consumer transactions, including mortgage transactions; and**
- (2) foster personal financial responsibility.**

**(b) A school corporation (including a charter school) and a nonpublic school that voluntarily has become accredited under IC 20-19-2-8 may meet the requirements of subsection (a) by:**

- (1) integrating the instruction described in subsection (a) in its required mathematics curriculum; or**
- (2) conducting a separate class or seminar that includes the instruction described in subsection (a).**

**(c) A person may not receive a high school diploma from a school subject to this section unless the person has received the instruction required by this section.**

**(d) The department, in collaboration with the department of**

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1 **financial institutions established by IC 28-11-1-1, shall develop**  
 2 **guidelines and the state board shall adopt rules under IC 4-22-2 to**  
 3 **assist teachers assigned to provide the instruction required by this**  
 4 **section.**

5 SECTION 15. IC 23-2-5-3, AS AMENDED BY P.L.230-2007,  
 6 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2008]: Sec. 3. (a) As used in this chapter, "certificate of  
 8 registration" means a certificate issued by the commissioner  
 9 authorizing an individual to:

10 (1) engage in origination activities on behalf of a licensee; or

11 (2) **act as a principal manager on behalf of a licensee.**

12 (b) As used in this chapter, "creditor" means a person:

13 (1) that loans funds of the person in connection with a loan; and

14 (2) to whom the loan is initially payable on the face of the note or  
 15 contract evidencing the loan.

16 (c) As used in this chapter, "license" means a license issued by the  
 17 commissioner authorizing a person to engage in the loan brokerage  
 18 business.

19 (d) As used in this chapter, "licensee" means a person that is issued  
 20 a license under this chapter.

21 (e) As used in this chapter, "loan broker" means any person who, in  
 22 return for any consideration from any source procures, attempts to  
 23 procure, or assists in procuring, a loan from a third party or any other  
 24 person, whether or not the person seeking the loan actually obtains the  
 25 loan. "Loan broker" does not include:

26 (1) any supervised financial organization (as defined in  
 27 IC 24-4.5-1-301(20)), including a bank, savings bank, trust  
 28 company, savings association, or credit union;

29 (2) any other financial institution that is:

30 (A) regulated by any agency of the United States or any state;  
 31 and

32 (B) regularly actively engaged in the business of making  
 33 consumer loans that are not secured by real estate or taking  
 34 assignment of consumer sales contracts that are not secured by  
 35 real estate;

36 (3) any insurance company; or

37 (4) any person arranging financing for the sale of the person's  
 38 product.

39 (f) As used in this chapter, "loan brokerage business" means a  
 40 person acting as a loan broker.

41 (g) As used in this chapter, "origination activities" means  
 42 communication with or assistance of a borrower or prospective

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borrower in the selection of loan products or terms.

(h) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "registrant" means an individual who is registered:

- (1) to engage in origination activities under this chapter; or
- (2) as a principal manager.

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(l) As used in this chapter, "principal manager" means an individual who:

- (1) has at least three (3) years of experience:
  - (A) as a loan broker; or
  - (B) in financial services;
 that is acceptable to the commissioner; and
- (2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

**(m) As used in this chapter, "personal information" includes any of the following:**

- (1) An individual's first and last names or first initial and last name.**
- (2) Any of the following data elements:**
  - (A) A Social Security number.**
  - (B) A driver's license number.**
  - (C) A state identification card number.**
  - (D) A credit card number.**
  - (E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.**
- (3) With respect to an individual, any of the following:**
  - (A) Address.**
  - (B) Telephone number.**

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(C) Information concerning the individual's:

- (i) income or other compensation;
- (ii) credit history;
- (iii) credit score;
- (iv) assets;
- (v) liabilities; or
- (vi) employment history.

(n) As used in this chapter, personal information is "encrypted" if the personal information:

- (1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or
- (2) is secured by another method that renders the personal information unreadable or unusable.

(o) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

- (1) a Social Security number;
- (2) a driver's license number;
- (3) a state identification number; or
- (4) an account number;

are accessible as part of the personal information.

SECTION 16. IC 23-2-5-4, AS AMENDED BY P.L.230-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **A person may not engage in the loan brokerage business in Indiana unless the person first obtains a license from the commissioner.** Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a license under this chapter.

(b) **An individual may not perform origination activities in Indiana on behalf of a person licensed or required to be licensed under this chapter unless the individual first obtains a certificate of registration from the commissioner.** An individual desiring to be employed by a licensee to engage in origination activities **on behalf of a person licensed or required to be licensed under this chapter** shall apply to the commissioner for registration under this chapter.

(c) **An individual may not act as a principal manager on behalf of a person licensed or required to be licensed under this chapter unless the individual first obtains a certificate of registration from the commissioner.** Any individual desiring to be employed by a licensee **act as a principal manager on behalf of a person licensed or**

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1 required to be licensed under this chapter shall apply to the  
2 commissioner for registration under this chapter.

3 **(d) The commissioner may request evidence of compliance with**  
4 **this section at any of the following times:**

5 **(1) The time of application for an initial:**

6 **(A) license; or**

7 **(B) certificate of registration.**

8 **(2) The time of renewal of a license or certificate of**  
9 **registration.**

10 **(3) Any other time considered necessary by the commissioner.**

11 **(e) For purposes of subsection (d), evidence of compliance with**  
12 **this section shall include a criminal background check, including**  
13 **a national criminal history background check (as defined in**  
14 **IC 10-13-3-12) by the Federal Bureau of Investigation.**

15 SECTION 17. IC 23-2-5-5, AS AMENDED BY P.L.230-2007,  
16 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a  
18 license must contain:

19 (1) consent to service of process under subsection (h);

20 (2) evidence of the bond required in subsection (e);

21 (3) an application fee of four hundred dollars (\$400), plus two  
22 hundred dollars (\$200) for each ultimate equitable owner;

23 (4) an affidavit affirming that none of the applicant's ultimate  
24 equitable owners, directors, managers, or officers have been  
25 convicted, in any jurisdiction, of an offense involving fraud or  
26 deception that is punishable by at least one (1) year of  
27 imprisonment, unless waived by the commissioner under  
28 subsection (f); (i);

29 (5) evidence that the applicant, if the applicant is an individual,  
30 has completed the education requirements under section 21 of this  
31 chapter;

32 (6) the name and registration number for each originator to be  
33 employed by the licensee;

34 (7) the name and registration number for each principal manager;  
35 and

36 (8) for each ultimate equitable owner, the following information:

37 (1) The name of the ultimate equitable owner.

38 (2) The address of the ultimate equitable owner, including the  
39 home address of the ultimate equitable owner if the ultimate  
40 equitable owner is an individual.

41 (3) The telephone number of the ultimate equitable owner,  
42 including the home telephone number if the ultimate equitable

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- 1 owner is an individual.
- 2 (4) The ultimate equitable owner's Social Security number and
- 3 date of birth, if the ultimate equitable owner is an individual.
- 4 (b) An application for registration as an originator shall be made on
- 5 a registration form prescribed by the commissioner. The application
- 6 must include the following information for the individual that seeks to
- 7 be registered as an originator:
- 8 (1) The name of the individual.
- 9 (2) The home address of the individual.
- 10 (3) The home telephone number of the individual.
- 11 (4) The individual's Social Security number and date of birth.
- 12 (5) The name of the:
- 13 (A) licensee; or
- 14 (B) applicant for licensure;
- 15 for whom the individual seeks to be employed as an originator.
- 16 (6) Consent to service of process under subsection (h).
- 17 (7) Evidence that the individual has completed the education
- 18 requirements described in section 21 of this chapter.
- 19 (8) An application fee of one hundred dollars (\$100).
- 20 (9) All registration numbers previously issued to the individual
- 21 under this chapter, if applicable.
- 22 (c) An application for registration as a principal manager shall be
- 23 made on a registration form prescribed by the commissioner. The
- 24 application must include the following information for the individual
- 25 who seeks to be registered as a principal manager:
- 26 (1) The name of the individual.
- 27 (2) The home address of the individual.
- 28 (3) The home telephone number of the individual.
- 29 (4) The individual's Social Security number and date of birth.
- 30 (5) The name of the:
- 31 (A) licensee; or
- 32 (B) applicant for licensure;
- 33 for whom the individual seeks to be employed as a principal
- 34 manager.
- 35 (6) Consent to service of process under subsection (h).
- 36 (7) Evidence that the individual has completed the education
- 37 requirements described in section 21 of this chapter.
- 38 (8) Evidence that the individual has at least three (3) years of
- 39 experience in the:
- 40 (A) loan brokerage; or
- 41 (B) financial services;
- 42 business.

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(9) An application fee of two hundred dollars (\$200).

(10) All registration numbers previously issued to the individual, if applicable.

(d) The commissioner shall require an applicant for registration as:

(1) an originator under subsection (b); or

(2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.

(e) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~fifty~~ **one hundred** thousand dollars ~~(\$50,000); (\$100,000)~~, which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(f) The commissioner shall issue a license and license number to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration and registration number authorizing the registrant to:

(1) engage in origination activities; or

(2) act as a principal manager;

whichever applies.

(g) Licenses and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance.

(h) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(i) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(j) Whenever an initial or a renewal application for a license or registration is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(k) The commissioner shall require each:

(1) equitable owner; ~~and~~

**(2) individual described in subsection (a)(4); and**

~~(2) (3)~~ applicant for registration as:

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1 (A) an originator; or  
 2 (B) a principal manager;  
 3 to ~~undergo~~ **submit fingerprints for a national criminal history**  
 4 **background check at the expense of the (as defined in IC 10-13-3-12)**  
 5 **by the Federal Bureau of Investigation, for use by the**  
 6 **commissioner in determining whether the equitable owner, the**  
 7 **individual described in subsection (a)(4), or the applicant should be**  
 8 **denied licensure or registration under this chapter for any reason**  
 9 **set forth in section 10(c) of this chapter. The equitable owner,**  
 10 **individual described in subsection (a)(4), or applicant shall pay any**  
 11 **fees or costs associated with the fingerprints and background check**  
 12 **required under this subsection. The commissioner may not release**  
 13 **the results of a background check described in this subsection to**  
 14 **any private entity.**

15 (l) The commissioner may check the qualifications, background,  
 16 licensing status, and service history of each:

- 17 (1) equitable owner; ~~and~~  
 18 **(2) individual described in subsection (a)(4); and**  
 19 ~~(2)~~ **(3) applicant for registration as:**

20 (A) an originator; or  
 21 (B) a principal manager;  
 22 by accessing, upon availability, a multistate automated licensing system  
 23 for mortgage brokers and originators; including the National Mortgage  
 24 Licensing Database proposed by the Conference of State Bank  
 25 Supervisors and the American Association of Residential Mortgage  
 26 Regulators; **and repository described in section 11(a)(16) of this**  
 27 **chapter. The equitable owner, the individual described in subsection**  
 28 **(a)(4), or the applicant shall pay any fees or costs associated with a**  
 29 **check conducted under this subsection.**

30 SECTION 18. IC 23-2-5-6 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not  
 32 continue engaging in the loan brokerage business unless the licensee's  
 33 license is renewed biennially. A registrant may not continue:

- 34 (1) engaging in origination activities; **or**  
 35 **(2) acting as a principal manager;**  
 36 unless the registrant's certificate of registration is renewed biennially.  
 37 A licensee shall renew its license ~~and the certificates of registration of~~  
 38 ~~its registrant employees~~ by filing with the commissioner, at least thirty  
 39 (30) days before the expiration of the ~~registration;~~ **license,** an  
 40 application containing any information the commissioner may require  
 41 to indicate any material change from the information contained in the  
 42 applicant's original application or any previous application. A

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1 **registrant may renew the registrant's certificate of registration by**  
 2 **filing with the commissioner, at least thirty (30) days before the**  
 3 **expiration of the registration, an application containing any**  
 4 **information the commissioner may require to indicate any material**  
 5 **change from the information contained in the applicant's original**  
 6 **application or any previous application.**

7 SECTION 19. IC 23-2-5-10, AS AMENDED BY P.L.230-2007,  
 8 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the commissioner  
 10 that a person has engaged in or is about to engage in an act or a practice  
 11 constituting a violation of this chapter or a rule or an order under this  
 12 chapter, the commissioner may investigate and may issue, with a prior  
 13 hearing if there exists no substantial threat of immediate irreparable  
 14 harm or without a prior hearing, if there exists a substantial threat of  
 15 immediate irreparable harm, orders and notices as the commissioner  
 16 determines to be in the public interest, including cease and desist  
 17 orders, orders to show cause, and notices. After notice and hearing, the  
 18 commissioner may enter an order of rescission, restitution, or  
 19 disgorgement, including interest at the rate of eight percent (8%) per  
 20 year, directed to a person who has violated this chapter or a rule or  
 21 order under this chapter.

22 (b) Upon the issuance of an order or notice without a prior hearing  
 23 by the commissioner under subsection (a), the commissioner shall  
 24 promptly notify the respondent and, if the subject of the order or notice  
 25 is a registrant, the licensee for whom the registrant is employed:

- 26 (1) that the order or notice has been issued;
- 27 (2) of the reasons the order or notice has been issued; and
- 28 (3) that upon the receipt of a written request the matter will be set
- 29 down for a hearing to commence within fifteen (15) business days
- 30 after receipt of the request unless the respondent consents to a
- 31 later date.

32 If a hearing is not requested and not ordered by the commissioner, an  
 33 order remains in effect until it is modified or vacated by the  
 34 commissioner. If a hearing is requested or ordered, the commissioner,  
 35 after notice of an opportunity for hearing, may modify or vacate the  
 36 order or extend it until final determination.

37 (c) The commissioner may deny **an application for an initial or a**  
 38 **renewal license or registration, and may** suspend or revoke the  
 39 license of a licensee or the registration of a registrant **if the applicant,**  
 40 the licensee, the registrant, or an ultimate equitable owner of **an**  
 41 **applicant or of a licensee:**

- 42 (1) fails to maintain the bond required under section 5 of this

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chapter;

(2) has, within the most recent ten (10) years:

(A) been the subject of an adjudication or a determination by:

(i) a court with jurisdiction; or

(ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

in Indiana or in any other jurisdiction; and

(B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;

(3) has:

(A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or

(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;

by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

(4) is insolvent;

(5) has violated any provision of this chapter;

(6) has knowingly filed with the commissioner any document or statement that:

(A) contains a false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of a license or certificate of registration as provided in subsection (i);

(7) has:

(A) been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit; or

(B) had a felony conviction (as defined in IC 35-50-2-1(b)) within five (5) years before the date of the application, renewal, or review;

(8) if the person is a licensee or principal manager, has failed to reasonably supervise the person's originators or employees to ensure their compliance with this chapter;

(9) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

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(10) has engaged in dishonest or unethical practices in the loan broker business, as determined by the commissioner.

(d) The commissioner may do either of the following:

(1) Censure:

(A) a licensee;

(B) an officer, a director, or an ultimate equitable owner of a licensee;

(C) a registrant; or

(D) any other person;

who violates or causes a violation of this chapter.

(2) Permanently bar any person described in subdivision (1) from being:

(A) licensed or registered under this chapter; or

(B) employed by or affiliated with a person licensed or registered under this chapter;

if the person violates or causes a violation of this chapter.

(e) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of a licensee or the registration of a registrant; or

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(f) IC 4-21.5 does not apply to a proceeding under this section.

(g) If a registrant seeks to transfer the registrant's registration to another licensee who desires to have the registrant engage in origination activities or serve as a principal manager, whichever applies, the registrant shall, before the registrant conducts origination

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activities or serves as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a registration application, as required by section 5 of this chapter.

(h) If the employment of a registrant is terminated, whether:

(1) voluntarily by the registrant; or

(2) by the licensee employing the registrant;

the licensee that employed the registrant shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

(i) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of the change in a material fact or statement.

SECTION 20. IC 23-2-5-11, AS AMENDED BY P.L.48-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The commissioner may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Make investigations and examinations:

(A) in connection with any application for licensure or for registration of a licensee or registrant or with any license or certificate of registration already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

(3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.

(4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The commissioner may also bring an action on

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1 behalf of the state to enjoin a person from violating this chapter.  
 2 The commissioner shall notify the person that an order or notice  
 3 has been issued, the reasons for it, and that a hearing will be set  
 4 within fifteen (15) days after the commissioner receives a written  
 5 request from the person requesting a hearing.

6 (5) Sign all orders, official certifications, documents, or papers  
 7 issued under this chapter or delegate the authority to sign any of  
 8 those items to a deputy.

9 (6) Hold and conduct hearings.

10 (7) Hear evidence.

11 (8) Conduct inquiries with or without hearings.

12 (9) Receive reports of investigators or other officers or employees  
 13 of the state of Indiana or of any municipal corporation or  
 14 governmental subdivision within the state.

15 (10) Administer oaths, or cause them to be administered.

16 (11) Subpoena witnesses, and compel them to attend and testify.

17 (12) Compel the production of books, records, and other  
 18 documents.

19 (13) Order depositions to be taken of any witness residing within  
 20 or without the state. The depositions shall be taken in the manner  
 21 prescribed by law for depositions in civil actions and made  
 22 returnable to the commissioner.

23 (14) Order that each witness appearing under the commissioner's  
 24 order to testify before the commissioner shall receive the fees and  
 25 mileage allowances provided for witnesses in civil cases.

26 (15) Provide interpretive opinions or issue determinations that the  
 27 commissioner will not institute a proceeding or an action under  
 28 this chapter against a specified person for engaging in a specified  
 29 act, practice, or course of business if the determination is  
 30 consistent with this chapter. The commissioner may adopt rules  
 31 to establish fees for individuals requesting an interpretive opinion  
 32 or a determination under this subdivision. A person may not  
 33 request an interpretive opinion or a determination concerning an  
 34 activity that:

35 (A) occurred before; or

36 (B) is occurring on;

37 the date the opinion or determination is requested.

38 **(16) Subject to subsection (f), designate a multistate**  
 39 **automated licensing system and repository, established and**  
 40 **operated by a third party, to serve as the sole entity**  
 41 **responsible for:**

42 (A) processing applications for:

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(i) licenses and certificates of registration under this chapter; and

(ii) renewals of licenses and certificates of registration under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing and registration system.

A multistate automated licensing system and repository described in this subdivision may include the National Mortgage Licensing System established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or

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noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

**(f) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(16) is subject to the following:**

**(1) The commissioner may not require any person exempt from licensure or registration under this chapter, or any employee or agent of an exempt person, to:**

**(A) submit information to; or**

**(B) participate in;**

**the multistate automated licensing system and repository.**

**(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.**

SECTION 21. IC 23-2-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) Each loan broker agreement shall be given an account number. Each ~~licensee~~ **person licensed or required to be licensed under this chapter** shall

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keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan agreement.

(F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the ~~licensee's~~ **loan broker's** principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

**(c) If a breach of the security of any records:**

**(1) maintained by a loan broker under this section; and**

**(2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;**

**occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the**

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disclosure requirements under IC 24-4.9-3-4.

(d) A person who is:

(1) licensed or required to be licensed under this chapter; or  
 (2) registered or required to be registered under this chapter;  
 may not dispose of the unencrypted, unredacted personal  
 information of one (1) or more borrowers or prospective  
 borrowers without first shredding, incinerating, mutilating,  
 erasing, or otherwise rendering the information illegible or  
 unusable.

SECTION 22. IC 23-2-5-19, AS AMENDED BY P.L.230-2007,  
 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the  
 requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or  
 accountant practitioner holding a certificate or registered under  
 IC 25-2.1 while performing the practice of accountancy (as  
 defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson  
 under IC 25-34.1 to the extent that the person is rendering loan  
 related services in the ordinary course of a transaction in which a  
 license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered  
 under IC 23-19.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C.  
 1601 through 1667e).

(6) Any community development corporation (as defined in  
 IC 4-4-28-2) acting as a subrecipient of funds from the Indiana  
 housing and community development authority established by  
 IC 5-20-1-3.

(7) The Indiana housing and community development authority.

(8) Subject to subsection (e), and except as provided in subsection  
 (f); any person authorized to:

(A) sell and service a loan for the Federal National Mortgage  
 Association or the Federal Home Loan Mortgage Association;

(B) issue securities backed by the Government National  
 Mortgage Association;

(C) make loans insured by the United States Department of

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Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;  
 (D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or  
 (E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development; if the person closes at least twenty-five (25) such insured loans in Indiana during each calendar year.

(9) (8) Any person who is a creditor, or proposed to be a creditor, for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall, as a condition to receiving or maintaining the exemption, file a notice every twenty-four (24) months on a form acceptable to the commissioner. The notice required under this subsection must:

(1) provide the name and business address of each originator employed by the person to originate loans in Indiana;

(2) include all other information required by the commissioner; and

(3) be accompanied by a fee of four hundred dollars (\$400).

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the commissioner of the change. The commissioner's receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the commissioner of the validity of the claimed exemption.

(f) An exemption described in subsection (a)(8) does not extend to:

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(1) a subsidiary of the exempt person; or

(2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D) does not extend to a registered United States Department of Veterans Affairs agent.

SECTION 23. IC 23-2-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) As used in this section, "creditworthiness", with respect to a prospective borrower, means those factors likely to affect the prospective borrower's ability to repay a loan at the loan's fully indexed rate, including the following:

(1) The prospective borrower's present and future:

(A) income, not including overtime payments, seasonal compensation, or other irregular income;

(B) expenses, including property taxes and insurance payments owed in connection with the property that is the subject of the loan;

(C) assets; and

(D) liabilities.

(2) The prospective borrower's credit history.

(3) Any other factor likely to affect the prospective borrower's ability to repay the loan at the loan's fully indexed rate.

(b) As used in this section, "fully indexed rate means:

(1) for a fixed rate mortgage transaction in which the interest rate will not vary during the term of the mortgage, the rate as of the date of closing;

(2) for a mortgage transaction in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the mortgage agreement; or

(3) for all other mortgage transactions in which the rate may vary at any time during the term of the mortgage, the maximum rate that may be charged during the term of the mortgage.

(c) For purposes of this section, a person conducts a "reasonable inquiry" into a prospective borrower's creditworthiness if the person:

(1) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(2) obtains information about the prospective borrower

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through:

- (A) a current or past employer of the prospective borrower;
- (B) public records; or
- (C) any other legal or commercially reasonable means.

(d) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

- (i) a misstatement; or
- (ii) an untrue statement;

of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is:

(A) included as part of:

- (i) an application form; or
- (ii) a document that is used in connection with an application process or an enrollment process;

(B) used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit; or

(C) used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or

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in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a loan to, or procure a loan on behalf of, a prospective borrower without first conducting a reasonable inquiry concerning the prospective borrower's creditworthiness.

(e) A person who commits an act described in subsection (d) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 24. IC 23-2-5-22, AS ADDED BY P.L.48-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) An appeal may be taken by:

(1) any ~~loan broker or principal upon person~~ whose application for registration for a ~~loan broker~~ **an initial or a renewal** license **under this chapter** is granted or denied, from any final order of the commissioner concerning the application; ~~or registration;~~

(2) any applicant for **initial or renewed** registration as a ~~loan broker~~ **principal manager** or an originator, from any final order of the commissioner affecting the application; ~~or registration as a loan broker or originator;~~

(3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter; to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars (\$500) to the

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1 state of Indiana with sufficient surety to be approved by the  
 2 commissioner, conditioned upon the faithful prosecution of the  
 3 appeal to final judgment and the payment of all costs that are  
 4 adjudged against the appellant.

5 (c) Not later than ten (10) days after the commissioner is served  
 6 with the items listed in subsection (b), the commissioner shall make,  
 7 certify, and deliver to the appellant the transcript, and the appellant  
 8 shall, not later than five (5) days after the date the appellant receives  
 9 the transcript, file the transcript and a copy of the notice of appeal with  
 10 the clerk of the court. The notice of appeal serves as the appellant's  
 11 complaint. The commissioner may appear and file any motion or  
 12 pleading and form the issue. The cause shall be entered on the trial  
 13 calendar for trial de novo and given precedence over all matters  
 14 pending in the court.

15 (d) The court shall receive and consider any pertinent oral or written  
 16 evidence concerning the order of the commissioner from which the  
 17 appeal is taken. If the order of the commissioner is reversed, the court  
 18 shall in its mandate specifically direct the commissioner as to the  
 19 commissioner's further action in the matter. The commissioner is not  
 20 barred from revoking or altering the order for any proper cause that  
 21 accrues or is discovered after the order is entered. If the order is  
 22 affirmed, the appellant is not barred after thirty (30) days from the date  
 23 the order is affirmed from filing a new application if the application is  
 24 not otherwise barred or limited. During the pendency of the appeal, the  
 25 order from which the appeal is taken is not suspended but remains in  
 26 effect unless otherwise ordered by the court. An appeal may be taken  
 27 from the judgment of the court on the same terms and conditions as an  
 28 appeal is taken in civil actions.

29 SECTION 25. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006,  
 30 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JANUARY 1, 2009]: Sec. 301. General Definitions – In addition to  
 32 definitions appearing in subsequent chapters in this article:

33 (1) "Agreement" means the bargain of the parties in fact as found in  
 34 their language or by implication from other circumstances, including  
 35 course of dealing or usage of trade or course of performance.

36 (2) "Agricultural purpose" means a purpose related to the  
 37 production, harvest, exhibition, marketing, transportation, processing,  
 38 or manufacture of agricultural products by a natural person who  
 39 cultivates, plants, propagates, or nurtures the agricultural products;  
 40 "Agricultural products" includes agricultural, horticultural, viticultural,  
 41 and dairy products, livestock, wildlife, poultry, bees, forest products,  
 42 fish and shellfish, and any and all products raised or produced on farms

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and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable **by written agreement in more than four (4) installments (not including a down payment)**; and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's

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obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(11) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) "Organization" means a corporation, a government or governmental subdivision, or an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, or an association.

(13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) "Person" includes a natural person or an individual and an organization.

(15) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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(17) "Mortgage transaction" means a ~~transaction~~ **consumer credit sale or consumer loan** in which a ~~first~~ mortgage, **deed of trust**, or a land contract which constitutes a ~~first~~ lien is created or retained against land **upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**

(18) "Regularly engaged" means a person who extends consumer credit more than:

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling; in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with; the person subject to this article.

(23) "**Dwelling**" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

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- 1           **(a) condominium unit;**  
 2           **(b) cooperative unit;**  
 3           **(c) mobile home; or**  
 4           **(d) trailer;**  
 5           **that is used as a residence.**

6           SECTION 26. IC 24-4.5-2-104 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. (1) Except  
 8           as provided in subsection (2), "consumer credit sale" is a sale of goods,  
 9           services, or an interest in land in which:

- 10           (a) credit is granted by a person who regularly engages as a seller  
 11           in credit transactions of the same kind;  
 12           (b) the buyer is a person other than an organization;  
 13           (c) the goods, services, or interest in land are purchased primarily  
 14           for a personal, family, or household purpose;  
 15           (d) either the debt is payable in installments or a credit service  
 16           charge is made; and  
 17           (e) with respect to a sale of goods or services, either:  
 18                (i) the amount financed does not exceed fifty thousand dollars  
 19                (\$50,000); or  
 20                (ii) the debt is secured by **a mortgage transaction or by**  
 21                personal property used or expected to be used as ~~the principal~~  
 22                **a dwelling of the buyer.**

23           (2) Unless the sale is made subject to this article by agreement  
 24           (IC 24-4.5-2-601), "consumer credit sale" does not include ~~(a) a sale in~~  
 25           which the seller allows the buyer to purchase goods or services  
 26           pursuant to a lender credit card or similar arrangement. ~~or (b) except~~  
 27           as provided with respect to disclosure ~~(IC 24-4.5-2-301); debtors'~~  
 28           remedies ~~(IC 24-4.5-5-201); providing payoff amounts~~  
 29           ~~(IC 24-4.5-2-209); and powers and functions of the department~~  
 30           ~~(IC 24-4.5-6-101); a sale of an interest in land which is a mortgage~~  
 31           ~~transaction (as defined in IC 24-4.5-1-301(17)).~~

32           SECTION 27. IC 24-4.5-2-105 IS AMENDED TO READ AS  
 33           FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 105. Definitions:  
 34           "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale  
 35           of Services"; "Sale of an Interest in Land"; "Precomputed".

36           (1) "Goods" includes goods not in existence at the time the  
 37           transaction is entered into and merchandise certificates, but excludes  
 38           money, chattel paper, documents of title, and instruments.

39           (2) "Merchandise certificate" means a writing issued by a seller not  
 40           redeemable in cash and usable in its face amount in lieu of cash in  
 41           exchange for goods or services.

42           (3) "Services" includes (a) work, labor, and other personal services,

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(b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

(4) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with ~~his~~ **the bailee's or lessee's** obligations under the agreement.

(5) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(6) "Sale of an interest in land" includes **a mortgage transaction or** a lease in which the **mortgagor or the** lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by ~~him~~ **the mortgagor or the lessee** are applied to the purchase price.

(7) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

SECTION 28. IC 24-4.5-2-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition; "Seller" - Except as otherwise provided, "seller" **means a person regularly engaged as a creditor in making consumer credit sales.** **The term** includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

SECTION 29. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts — (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid

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- 1 balances of the amount financed which is three hundred  
 2 dollars (\$300) or less;  
 3 (ii) twenty-one percent (21%) per year on that part of the  
 4 unpaid balances of the amount financed which is more than  
 5 three hundred dollars (\$300) but does not exceed one thousand  
 6 dollars (\$1,000); and  
 7 (iii) fifteen percent (15%) per year on that part of the unpaid  
 8 balances of the amount financed which is more than one  
 9 thousand dollars (\$1,000); or  
 10 (b) twenty-one percent (21%) per year on the unpaid balances of  
 11 the amount financed.  
 12 (3) This section does not limit or restrict the manner of contracting  
 13 for the credit service charge, whether by way of add-on, discount, or  
 14 otherwise, so long as the rate of the credit service charge does not  
 15 exceed that permitted by this section. If the sale is precomputed:  
 16 (a) the credit service charge may be calculated on the assumption  
 17 that all scheduled payments will be made when due; and  
 18 (b) the effect of prepayment is governed by the provisions on  
 19 rebate upon prepayment (IC 24-4.5-2-210).  
 20 (4) For the purposes of this section, the term of a sale agreement  
 21 commences with the date the credit is granted or, if goods are delivered  
 22 or services performed more than thirty (30) days after that date, with  
 23 the date of commencement of delivery or performance except as set  
 24 forth below:  
 25 (a) Delays attributable to the customer. Where the customer  
 26 requests delivery after the thirty (30) day period or where delivery  
 27 occurs after the thirty (30) day period for a reason attributable to  
 28 the customer (including but not limited to failure to close on a  
 29 residence or failure to obtain lease approval), the term of the sale  
 30 agreement shall commence with the date credit is granted.  
 31 (b) Partial Deliveries. Where any portion of the order has been  
 32 delivered within the thirty (30) day period, the term of the sale  
 33 agreement shall commence with the date credit is granted.  
 34 Differences in the lengths of months are disregarded and a day may be  
 35 counted as one-thirtieth (1/30) of a month. Subject to classifications  
 36 and differentiations the seller may reasonably establish, a part of a  
 37 month in excess of fifteen (15) days may be treated as a full month if  
 38 periods of fifteen (15) days or less are disregarded and that procedure  
 39 is not consistently used to obtain a greater yield than would otherwise  
 40 be permitted.  
 41 (5) Subject to classifications and differentiations the seller may  
 42 reasonably establish, the seller may make the same credit service

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charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars (\$30). The minimum credit service charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;

(b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a credit service charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under this subsection.

(7) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

SECTION 30. IC 24-4.5-2-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 209. Right to Prepay -

(1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (IC 24-4.5-2-210), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide an accurate

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payoff of the consumer credit sale to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

**(4) This subsection applies to a consumer credit sale that is a mortgage transaction and with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer. The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is**

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liable under the terms set forth in subsection (3), as if the creditor or mortgage servicer had failed to provide a consumer credit sale payoff amount.

SECTION 31. IC 24-4.5-3-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 103. Definitions in Chapter – The following definitions apply to this Article:

"Consumer loan" ..... Section 3-104

"Consumer related loan" ..... Section 3-602 (1)

"Lender" ..... Section 3-107 (1)

"Loan" ..... Section 3-106

"Loan finance charge" ..... Section 3-109

~~"Loan primarily secured by an interest in land" ..... Section 3-105~~

"Precomputed" ..... Section 3-107 (2)

"Principal" ..... Section 3-107 (3)

"Revolving loan account" ..... Section 3-108

"Supervised lender" ..... Section 3-501 (2)

"Supervised loan" ..... 3-501 (1)

SECTION 32. IC 24-4.5-3-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. ~~Except with respect to a loan primarily secured by an interest in land (IC 24-4.5-3-105);~~ "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either:
  - (i) the principal does not exceed fifty thousand dollars (\$50,000); or
  - (ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

SECTION 33. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" – (1) Except as otherwise provided, "lender" **means a person regularly engaged in making consumer loans. The term** includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

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(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109); and

(c) to the extent that payment is deferred:

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) additional charges permitted by this Chapter (24-4.5-3-202).

SECTION 34. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving

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loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent ( $1\frac{3}{4}\%$ ) of an amount no greater than:

- (i) the average daily balance of the debt;
- (ii) the unpaid balance of the debt on the same day of the billing cycle; or
- (iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth ( $1/12$ ) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

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(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (1); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

- (a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.
- (b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.
- (9) The charges provided for in subsection (8):
  - (a) are not subject to refund or rebate;
  - (b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and
  - (c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line

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1 and the increased credit line. This subsection does not prohibit a lender  
 2 from contracting for and receiving a fee for preparing deeds,  
 3 mortgages, reconveyance, and similar documents under  
 4 IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in  
 5 subsection (8).

6 SECTION 35. IC 24-4.5-3-209 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to  
 8 Prepay - (1) Subject to the provisions on rebate upon prepayment  
 9 (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of  
 10 a consumer loan, refinancing, or consolidation at any time without  
 11 penalty. With respect to a consumer loan that is primarily secured by  
 12 an interest in land, a lender may contract for a penalty for prepayment  
 13 of the loan in full, not to exceed two percent (2%) of any amount  
 14 prepaid within sixty (60) days of the date of the prepayment in full,  
 15 after deducting all refunds and rebates as of the date of the prepayment.  
 16 However, the penalty may not be imposed:

17 (a) if the loan is refinanced or consolidated with the same  
 18 creditor;

19 (b) for prepayment by proceeds of any insurance or acceleration  
 20 after default; or

21 (c) after three (3) years from the contract date.

22 (2) At the time of prepayment of a consumer loan not subject to the  
 23 provisions of rebate upon prepayment (IC 24-4.5-3-210), the total  
 24 finance charge, including the prepaid finance charge but excluding the  
 25 loan origination fee allowed under IC 24-4.5-3-201, may not exceed the  
 26 maximum charge allowed under this chapter for the period the loan was  
 27 in effect. For the purposes of determining compliance with this  
 28 subsection, the total finance charge does not include the following:

29 (a) The loan origination fee allowed under IC 24-4.5-3-201.

30 (b) The ~~borrower~~ debtor paid mortgage broker fee, if any, paid to  
 31 a person who does not control, is not controlled by, or is not under  
 32 common control with, the creditor holding the loan at the time a  
 33 consumer loan is prepaid.

34 (3) The creditor or mortgage servicer shall provide an accurate  
 35 payoff of the consumer loan to the debtor within ten (10) calendar days  
 36 after the creditor or mortgage servicer receives the debtor's written  
 37 request for the accurate consumer loan payoff amount. A creditor or  
 38 mortgage servicer who fails to provide the accurate consumer loan  
 39 payoff amount is liable for:

40 (a) one hundred dollars (\$100) if an accurate consumer loan  
 41 payoff amount is not provided by the creditor or mortgage  
 42 servicer within ten (10) calendar days after the creditor or

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1 mortgage servicer receives the debtor's first written request; and

2 (b) the greater of:

3 (i) one hundred dollars (\$100); or

4 (ii) the loan finance charge that accrues on the loan from the  
5 date the creditor or mortgage servicer receives the first written  
6 request until the date on which the accurate consumer loan  
7 payoff amount is provided;

8 if an accurate consumer loan payoff amount is not provided by the  
9 creditor or mortgage servicer within ten (10) calendar days after  
10 the creditor or mortgage servicer receives the debtor's second  
11 written request, and the creditor or mortgage servicer failed to  
12 comply with subdivision (a).

13 A liability under this subsection is an excess charge under  
14 IC 24-4.5-5-202.

15 **(4) This subsection applies to a consumer credit loan that is a**  
16 **mortgage transaction and with respect to which any installment or**  
17 **minimum payment due is delinquent for at least ten (10) days. The**  
18 **creditor, servicer, or the creditor's agent shall acknowledge a**  
19 **written offer made in connection with a proposed short sale not**  
20 **later than ten (10) business days after the date of the offer. The**  
21 **creditor, servicer, or creditor's agent is required to acknowledge**  
22 **a written offer made in connection with a proposed short sale from**  
23 **a third party acting on behalf of the debtor only if the debtor has**  
24 **provided written authorization for the creditor, servicer, or**  
25 **creditor's agent to do so. Not later than twenty (20) business days**  
26 **after receipt of an offer under this subsection, the creditor,**  
27 **servicer, or creditor's agent shall respond to the offer with an**  
28 **acceptance or a rejection of the offer. As used in this subsection,**  
29 **"short sale" means a transaction in which the property that is the**  
30 **subject of a mortgage transaction is sold for an amount that is less**  
31 **than the amount of the debtor's outstanding obligation under the**  
32 **mortgage transaction. A creditor or mortgage servicer that fails to**  
33 **respond to an offer within the time prescribed by this subsection is**  
34 **liable under the terms set forth in subsection (3), as if the creditor**  
35 **or mortgage servicer had failed to provide a consumer loan payoff**  
36 **amount.**

37 SECTION 36. IC 24-4.5-3-301 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. ~~(1)~~ For the  
39 purposes of this section, "consumer loan" includes a loan secured  
40 primarily by an interest in land which is a mortgage transaction if the  
41 loan is otherwise a consumer loan ~~(IC 24-4.5-3-104).~~

42 ~~(2)~~ (1) The lender shall disclose to the debtor to whom credit is

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1 extended with respect to a consumer loan the information required by  
 2 the Federal Consumer Credit Protection Act.

3 ~~(3)~~ **(2)** For purposes of subsection ~~(2)~~, **(1)**, disclosures shall not be  
 4 required on a consumer loan if the transaction is exempt from the  
 5 Federal Consumer Credit Protection Act.

6 SECTION 37. IC 24-4.5-3-402, AS AMENDED BY P.L.217-2007,  
 7 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2008]: Sec. 402. (1) Except as provided in IC 24-9-4-3 with  
 9 respect to a high cost home loan (as defined in IC 24-9-2-8), with  
 10 respect to a consumer loan, other than one pursuant to a revolving loan  
 11 account or one on which only loan finance charges are payable prior to  
 12 the time that the final scheduled payment is due, if any scheduled  
 13 payment is more than twice as large as the average of earlier scheduled  
 14 payments, the debtor has the right to refinance the amount of that  
 15 payment at the time it is due without penalty. The terms of the  
 16 refinancing shall be no less favorable to the debtor than the terms of the  
 17 original loan. This section does not apply to the extent that the payment  
 18 schedule is adjusted to the seasonal or irregular income of the debtor.

19 (2) For the purposes of this section, "terms of the refinancing"  
 20 means:

21 (a) in the case of a fixed-rate consumer loan, the individual  
 22 payment amounts, the charges as a result of default by the debtor,  
 23 and the rate of the loan finance charge; and

24 (b) in the case of a variable rate consumer loan, the method used  
 25 to determine the individual payment amounts, the charges as a  
 26 result of default by the debtor, the method used to determine the  
 27 rate of the loan finance charge, the circumstances under which the  
 28 rate of the loan finance charge may increase, and any limitations  
 29 on the increase in the rate of the loan finance charge.

30 (3) If a consumer loan is made under the authority of the Alternative  
 31 Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note  
 32 evidencing the mortgage must contain a reference to the applicable  
 33 federal law.

34 **(4) This section does not apply to a first lien mortgage**  
 35 **transaction.**

36 SECTION 38. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006,  
 37 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised  
 39 Loans – (1) With respect to a supervised loan, including a loan  
 40 pursuant to a revolving loan account, a supervised lender may contract  
 41 for and receive a loan finance charge not exceeding that permitted by  
 42 this section.

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(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars (\$300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars (\$1000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth ( $1/30$ ) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

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(6) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars (\$30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (2); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 39. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

**Chapter 8. Mortgage Transactions**

**Sec. 101. This chapter shall be known and may be cited as Uniform Consumer Credit Code—First Lien Mortgage Transactions.**

**Sec. 102. Except as provided in section 103 of this chapter, the following do not apply to a first lien mortgage transaction under this chapter:**

- (a) IC 24-4.5-1.
- (b) IC 24-4.5-2.
- (c) IC 24-4.5-3.
- (d) IC 24-4.5-4.
- (e) IC 24-4.5-5.
- (f) IC 24-4.5-6.
- (g) IC 24-4.5-7.

**Sec. 103. (1) The following apply to first lien mortgage transactions under this chapter:**

- (a) IC 24-4.5-1-101 through IC 24-4.5-1-108 and IC 24-4.5-1-201 through IC 24-4.5-1-302.

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(b) IC 24-4.5-2-104, IC 24-4.5-2-105, IC 24-4.5-2-107, IC 24-4.5-2-111, IC 24-4.5-2-208, IC 24-4.5-2-209, IC 24-4.5-2-301, IC 24-4.5-2-407, IC 24-4.5-2-413 through IC 24-4.5-2-415, IC 24-4.5-2-501, and IC 24-4.5-2-502.

(c) IC 24-4.5-3-101, IC 24-4.5-3-103, IC 24-4.5-3-104, IC 24-4.5-3-106 through IC 24-4.5-3-109, IC 24-4.5-3-207, IC 24-4.5-3-208, IC 24-4.5-3-301, IC 24-4.5-3-403 through IC 24-4.5-3-405, IC 24-4.5-3-407, IC 24-4.5-3-408, IC 24-4.5-3-503 through IC 24-4.5-3-505, IC 24-4.5-3-506, IC 24-4.5-3-507, IC 24-4.5-3-512, IC 24-4.5-3-606, IC 24-4.5-3-701.

(d) IC 24-4.5-4-101 through IC 24-4.5-4-305.

(e) IC 24-4.5-5-101 through IC 24-4.5-5-302.

(f) IC 24-4.5-6-101, IC 24-4.5-6-103 through IC 24-4.5-6-202, and IC 24-4.5-6-204.

(2) A reference to a consumer loan in any provision set forth in paragraph (1) shall be considered a reference to a first lien mortgage transaction for purposes of this chapter.

Sec. 104. As used in this chapter, "tablefunding" means a transaction in which:

- (a) a person closes a loan in the person's own name as a mortgagee with funds provided by others; and
- (b) the loan is assigned simultaneously to the mortgage lender providing the funding not later than one (1) business day after the funding of the loan.

Sec. 105. As used in this chapter, "creditor" means a person:

- (a) who regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

The term does not include a person who is initially payable as mortgagee in a table funding transaction.

Sec. 106. Unless a person:

- (a) is:
  - (i) a supervised financial organization (as defined in IC 24-4.5-1-301(20));
  - (ii) a collection agency licensed under IC 25-11-1; or
- (b) has first obtained a license from the department under this

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chapter;  
the person shall not regularly engage in Indiana as a creditor in first lien mortgage transactions. If a person violates this section, IC 24-4.5-4.5-202(2) applies to any first lien mortgage transaction resulting from the violation.

Sec. 107. To become licensed under this chapter, a person must comply with the licensing requirements set forth in IC 24-4.5-3-503.

Sec. 108. (1) An applicant for a license under this chapter is subject to a license application fee established by the department under IC 28-11-3-5.

(2) A person licensed under this chapter is subject to:

(1) license renewal fees established by the department under IC 28-11-3-5; and

(2) examination fees established by the department under IC 28-11-3-5 to fund the department's regulation of the person's first lien mortgage business.

SECTION 40. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007, SECTION 165, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly

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engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

**(C) With respect to a deceptive act described in section 3(h) of this chapter, a creditor:**

**(i) as defined in IC 24-9-2-6, with respect to a home loan; or**

**(ii) as defined in IC 24-4.5-1-301(8), with respect to a mortgage transaction.**

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged

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by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

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1 (C) services;  
 2 that is transmitted to a person without the person's prior express  
 3 invitation or permission, in writing or otherwise.

4 (b) As used in section 3(a)(15) of this chapter:

5 (1) "Directory assistance" means the disclosure of telephone  
 6 number information in connection with an identified telephone  
 7 service subscriber by means of a live operator or automated  
 8 service.

9 (2) "Local telephone directory" refers to a telephone classified  
 10 advertising directory or the business section of a telephone  
 11 directory that is distributed by a telephone company or directory  
 12 publisher to subscribers located in the local exchanges contained  
 13 in the directory. The term includes a directory that includes  
 14 listings of more than one (1) telephone company.

15 (3) "Local telephone number" refers to a telephone number that  
 16 has the three (3) number prefix used by the provider of telephone  
 17 service for telephones physically located within the area covered  
 18 by the local telephone directory in which the number is listed. The  
 19 term does not include long distance numbers or 800-, 888-, or  
 20 900- exchange numbers listed in a local telephone directory.

21 SECTION 41. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006,  
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2008]: Sec. 3. (a) The following acts or representations as to  
 24 the subject matter of a consumer transaction, made orally, in writing,  
 25 or by electronic communication, by a supplier, are deceptive acts:

26 (1) That such subject of a consumer transaction has sponsorship,  
 27 approval, performance, characteristics, accessories, uses, or  
 28 benefits it does not have which the supplier knows or should  
 29 reasonably know it does not have.

30 (2) That such subject of a consumer transaction is of a particular  
 31 standard, quality, grade, style, or model, if it is not and if the  
 32 supplier knows or should reasonably know that it is not.

33 (3) That such subject of a consumer transaction is new or unused,  
 34 if it is not and if the supplier knows or should reasonably know  
 35 that it is not.

36 (4) That such subject of a consumer transaction will be supplied  
 37 to the public in greater quantity than the supplier intends or  
 38 reasonably expects.

39 (5) That replacement or repair constituting the subject of a  
 40 consumer transaction is needed, if it is not and if the supplier  
 41 knows or should reasonably know that it is not.

42 (6) That a specific price advantage exists as to such subject of a

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consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

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(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance data base if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(18) That a supplier knowingly sells or resells a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer unless the product has been repaired or modified to correct the defect that was the subject of

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the recall.

(19) That the supplier violated 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance data base unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

**(h) In addition to the acts set forth in subsection (a), a violation of IC 24-9 (concerning home loans) is a deceptive act under this chapter.**

SECTION 42. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,

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SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **Except as provided in subsection (l),** a person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. **Except for a deceptive act described in section 3(h) of this chapter, and except for purchases of time shares and camping club memberships,** this subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)). ~~except for purchases of time shares and camping club memberships.~~ This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. **Except for a deceptive act described in section 3(h) of this chapter, and except for purchases of time shares and camping club memberships,** this subsection does not apply to a consumer transaction in real property. ~~except for purchases of time shares and camping club memberships.~~ Actual damages awarded to a class have priority over any civil penalty

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imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act, **including a deceptive act described in section 3(h) of this chapter.** However, **with respect to all other consumer transactions involving real property**, the attorney general may seek to enjoin patterns of incurable deceptive acts. ~~with respect to consumer transactions in real property.~~ In addition, the court may:

(1) issue an injunction;

(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;

(3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and

(4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) **Except as provided in subsection (l),** any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) **or 3(h)** of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this

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chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

**(l) The following apply to a deceptive act described in section 3(h) of this chapter:**

**(1) A person aggrieved by an uncured or incurable deceptive act described in section 3(h) of this chapter may bring an action under subsection (a) for the damages actually suffered as a consumer as a result of the deceptive act. The court may increase damages for a willful deceptive act in an amount that does not exceed three (3) times the actual damages of the consumer suffering the loss.**

**(2) For a violation of an injunction issued under subsection (c), a civil penalty of not more than thirty thousand dollars (\$30,000) may be imposed under subsection (f).**

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1           **(3) If a court finds any person has knowingly violated section**  
 2           **3(h) of this chapter, the attorney general, in an action**  
 3           **pursuant to subsection (c), may recover from the person on**  
 4           **behalf of the state a civil penalty of a fine not exceeding ten**  
 5           **thousand dollars (\$10,000) per violation. A civil penalty**  
 6           **recovered under this subdivision shall be deposited in the**  
 7           **homeowner protection unit account established by**  
 8           **IC 4-6-12-9.**

9           SECTION 43. IC 24-5-0.5-8 IS AMENDED TO READ AS  
 10          FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) Except as**  
 11          **provided in subsection (b), a person who commits an incurable**  
 12          **deceptive act is subject to a civil penalty of a fine of not more than five**  
 13          **hundred dollars (\$500) for each violation. The attorney general, acting**  
 14          **in the name of the state, has the exclusive right to petition for recovery**  
 15          **of such a fine, and this fine may be recovered only in an action brought**  
 16          **under section 4(c) of this chapter.**

17          **(b) A person who commits an incurable deceptive act described**  
 18          **in section 3(h) of this chapter is subject to a civil penalty of a fine**  
 19          **of not more than one thousand dollars (\$1,000) for each violation.**  
 20          **The attorney general, acting in the name of the state, has the**  
 21          **exclusive right to petition for recovery of the fine, and the fine may**  
 22          **be recovered only in an action brought under section 4(c) of this**  
 23          **chapter.**

24          SECTION 44. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE  
 25          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 26          1, 2008]: Sec. 1.1. **(a) As used in this section, "creditworthiness",**  
 27          **with respect to a prospective borrower, means those factors likely**  
 28          **to affect the prospective borrower's ability to repay a home loan at**  
 29          **the home loan's trigger rate, including the following:**

30               **(1) The prospective borrower's present and future:**

31                   **(A) income, not including overtime payments, seasonal**  
 32                   **compensation, or other irregular income;**

33                   **(B) expenses, including property taxes and insurance**  
 34                   **payments owed in connection with the home that is the**  
 35                   **subject of the home loan;**

36                   **(C) assets; and**

37                   **(D) liabilities.**

38               **(2) The prospective borrower's credit history.**

39               **(3) Any other factor likely to affect the prospective borrower's**  
 40               **ability to repay the home loan at the home loan's trigger rate.**

41          **(b) For purposes of this section, a creditor conducts a**  
 42          **"reasonable inquiry" into a prospective borrower's**

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1 creditworthiness if the creditor:

2 (1) obtains a consumer report (as defined in IC 24-5-24-2) or  
 3 other information maintained by a consumer reporting  
 4 agency (as defined in IC 24-5-24-3) with respect to the  
 5 prospective borrower; and

6 (2) obtains information about the prospective borrower  
 7 through:

8 (A) a current or past employer of the prospective  
 9 borrower;

10 (B) public records; or

11 (C) any other legal or commercially reasonable means.

12 (c) As used in this section, "stated income or no documentation  
 13 loan" means a home loan with respect to which a creditor:

14 (1) relies solely on a prospective borrower's written or oral  
 15 statement of the prospective borrower's creditworthiness; and

16 (2) does not independently verify the accuracy of the  
 17 prospective borrower's statement by conducting a reasonable  
 18 inquiry into the prospective borrower's creditworthiness;

19 in making an underwriting determination with respect to the  
 20 prospective borrower.

21 (d) A creditor may not do either of the following:

22 (1) Recommend or issue a stated income or no documentation  
 23 loan to a prospective borrower.

24 (2) Recommend or issue a home loan to a prospective  
 25 borrower without first conducting a reasonable inquiry into  
 26 the prospective borrower's creditworthiness. A creditor, or  
 27 any officer, agent, or employee of a creditor, that conducts a  
 28 reasonable inquiry under this section is not liable to:

29 (A) a borrower or prospective borrower;

30 (B) a subsequent purchaser of a home that was the subject  
 31 of a home loan on which a borrower has defaulted; or

32 (C) any other person;

33 if a borrower later defaults on a home loan issued by the  
 34 creditor.

35 SECTION 45. IC 24-9-3-6 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) A creditor may  
 37 not charge a fee for informing or transmitting to a person the balance  
 38 due to pay off a home loan or to provide a written release upon  
 39 prepayment. A creditor must provide a payoff balance not later than ten  
 40 (10) ~~business~~ **calendar** days after the request is received by the  
 41 creditor. ~~(b)~~ For purposes of this ~~section~~; **subsection**, "fee" does not  
 42 include actual charges incurred by a creditor for express or priority

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1 delivery requested by the borrower of home loan documents to the  
2 borrower.

3 **(b) This subsection applies to a home loan with respect to which**  
4 **any installment or minimum payment due is delinquent for at least**  
5 **ten (10) days. The creditor, servicer, or the creditor's agent shall**  
6 **acknowledge a written offer made in connection with a proposed**  
7 **short sale not later than ten (10) business days after the date of the**  
8 **offer. The creditor, servicer, or creditor's agent is required to**  
9 **acknowledge a written offer made in connection with a proposed**  
10 **short sale from a third party acting on behalf of the debtor only if**  
11 **the debtor has provided written authorization for the creditor,**  
12 **servicer, or creditor's agent to do so. Not later than twenty (20)**  
13 **business days after receipt of an offer under this subsection, the**  
14 **creditor, servicer, or creditor's agent shall respond to the offer**  
15 **with an acceptance or a rejection of the offer. As used in this**  
16 **subsection, "short sale" means a transaction in which the property**  
17 **that is the subject of a home loan is sold for an amount that is less**  
18 **than the amount of the borrower's outstanding obligation on the**  
19 **home loan. A creditor, a servicer, or a creditor's agent that fails to**  
20 **respond to an offer within the time prescribed by this subsection is**  
21 **liable under the terms set forth in IC 24-4.5-3-209(3), as if the**  
22 **creditor, servicer, or agent had failed to provide a consumer loan**  
23 **payoff amount.**

24 SECTION 46. IC 24-9-4-8 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A creditor may  
26 not make a high cost home loan without regard to repayment ability.

27 (b) If a creditor presents evidence that the creditor:

28 (1) followed commercially reasonable practices in determining  
29 the borrower's debt to income ratio; and

30 (2) **conducted a reasonable inquiry into a prospective**  
31 **borrower's creditworthiness under IC 24-9-3-1.1;**

32 there is a rebuttable presumption that the creditor made the high cost  
33 home loan with due regard to repayment ability. ~~For purposes of this~~  
34 ~~section, there is a rebuttable presumption that the borrower's statement~~  
35 ~~of income provided to the creditor is true and complete.~~

36 (c) **For purposes of subsection (b)(1),** commercially reasonable  
37 practices include the use of:

38 (1) the debt to income ratio:

39 (A) listed in 38 CFR 36.4337(c)(1); and

40 (B) defined in 38 CFR 36.4337(d); and

41 (2) the residual income guidelines established under:

42 (A) 38 CFR 36.4337(e); and

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(B) United States Department of Veterans Affairs form  
26-6393.

SECTION 47. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE  
AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2008]:

**Chapter 4.5. Residential Real Estate Closings**

**Sec. 1. This chapter applies to a home loan closing that takes  
place after June 30, 2008.**

**Sec. 2. As used in this chapter, "closing documents" refers to the  
documents that a settlement service provider is required to provide  
to a borrower at or before the closing of a home loan, in  
accordance with the requirements of the federal Real Estate  
Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.**

**Sec. 3. (a) As used in this chapter, "settlement service provider"  
means a person that provides services in connection with the  
closing of a real estate transaction, including the provision of title  
examinations or title insurance.**

**(b) The term includes a closing agent (as defined in  
IC 6-1.1-12-43(a)(2)).**

**Sec. 4. A creditor shall provide a prospective borrower with a  
notice that states that the prospective borrower has a right to  
receive, at least forty-eight (48) hours before the closing of a home  
loan, the closing documents with respect to the home loan. The  
creditor shall provide the notice required by this section at the  
same time that the creditor provides the good faith estimates  
required under the federal Real Estate Settlement Procedures Act  
(12 U.S.C. 2601 et seq.) as amended.**

**Sec. 5. (a) Subject to subsection (b), not later than forty-eight  
(48) hours before the closing of a home loan, a settlement service  
provider shall make available to the borrower the closing  
documents with respect to the home loan. The settlement service  
provider shall make the closing documents available to the  
borrower:**

- (1) at the office of the creditor or the settlement service  
provider;**
- (2) through the United States mail;**
- (3) by facsimile; or**
- (4) through any other commercially reasonable means.**

**(b) A borrower may waive the right to receive the closing  
documents with respect to a home loan by providing a written  
notice of waiver to the settlement service provider at or before the  
time of closing.**

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(c) If the terms of the home loan set forth in the closing documents made available to the borrower under subsection (a) differ from the terms of the home loan presented to the borrower at the time of the closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract. For purposes of this subsection, "terms", with respect to a home loan, include any of the following:

- (1) The total loan amount.
- (2) The loan's rate, including the trigger rate.
- (3) Points and fees.
- (4) Payment amounts and schedules.
- (5) The term or duration of the loan.
- (6) Prepayment penalties, if any.
- (7) Acceleration provisions.
- (8) Servicing of the loan.
- (9) Other provisions concerning the rights and responsibilities of the parties to the home loan.

Sec. 6. (a) A settlement service provider is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the settlement service provider fails to:

- (1) provide a prospective borrower with the notice required by section 4 of this chapter; or
- (2) make closing documents available to a borrower as required by section 5 of this chapter, unless the borrower has waived the borrower's right to receive the closing documents under section 5(b) of this chapter.

(b) A penalty described in subsection (a):

- (1) may be enforced by the state agency that has administrative jurisdiction over the settlement service provider in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and
- (2) shall be paid into the property tax replacement fund.

(c) A settlement service provider is not liable for any other damages claimed by a customer because of the closing agent's failure to comply with this chapter.

SECTION 48. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

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(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to ~~two (2)~~ **four (4)** times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and
- (2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

SECTION 49. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A person who knowingly or intentionally violates this article commits:

- (1) a Class ~~A misdemeanor~~; **D felony**; and
- (2) an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

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SECTION 50. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (4) impose a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

SECTION 51. IC 25-34.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) To be licensed or certified as a real estate appraiser, an individual must meet the following conditions:

- (1) Not have a conviction for any of the following:
  - (A) An act that would constitute a ground for disciplinary sanction under IC 25-1-11.
  - (B) A crime that has a direct bearing on the individual's ability to practice competently.
  - (C) Fraud or material deception in the course of professional services or activities.
  - (D) A crime that indicates the individual has the propensity to endanger the public.
- (2) Have satisfied the requirements established under IC 25-34.1-3-8(f).

(b) **After June 30, 2008, the board shall require each applicant for initial licensure or certification under this chapter to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the board in determining whether the applicant should be denied licensure or certification under this chapter for any reason set forth in subsection (a)(1). The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The board may not release the results of a background check described in this subsection to any private entity.**

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(c) The board may request evidence of compliance with this section in accordance with subsection (d). Evidence of compliance with this section may include any of the following:

(1) Subject to subsections (b) and (d)(2), criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

(2) Credit histories.

(3) Other background checks considered necessary by the board.

(d) The board may request evidence of compliance with this section at any of the following times:

(1) The time of application for an initial license or certificate.

(2) The time of renewal of a license or certificate.

(3) Any other time considered necessary by the board.

(e) The commission, upon recommendation of the board, shall adopt rules under IC 4-22-2 to implement this section.

SECTION 52. IC 34-30-2-16.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16.6. IC 6-1.1-12-43 (Concerning a closing ~~agent's agent~~ for failure to file, submit, or provide a form a customer with certain forms concerning property tax benefits, or for any determination made with respect to a customer's eligibility for a benefit).

SECTION 53. IC 34-30-2-96.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 96.7. IC 24-9-3-1.1 (Concerning a creditor's reasonable inquiry into a prospective borrower's creditworthiness.)

SECTION 54. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2009]: IC 24-4.5-3-105; IC 24-4.5-5-201.

SECTION 55. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "task force" refers to the mortgage lending and fraud prevention task force created under subsection (b).

(b) Not later than May 1, 2008, the following agencies shall create the mortgage lending and fraud prevention task force by each appointing an equal number of representatives to serve on the task force:

(1) The securities division of the office of the secretary of state established under IC 23-19-6-1(a).

(2) The homeowner protection unit established by the attorney general under IC 4-6-12-2.

(3) The department of financial institutions established by

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1 IC 28-11-1-1.

2 (4) The department of insurance created by IC 27-1-1-1.

3 (5) The Indiana real estate commission created by  
4 IC 25-34.1-2-1.

5 (6) The real estate appraiser licensure and certification board  
6 created by IC 25-34.1-8-1.

7 (c) The members of the task force shall annually appoint a chair  
8 from among the members of the task force. Each year, the  
9 chairmanship shall rotate among the agencies set forth in  
10 subsection (b).

11 (d) Subject to subsection (e), beginning not later than July 2008,  
12 the task force shall meet each month to:

13 (1) coordinate the state's efforts to:

14 (A) regulate the various participants involved in  
15 originating, issuing, and closing home loans;

16 (B) enforce state laws and rules concerning mortgage  
17 lending practices and mortgage fraud; and

18 (C) prevent fraudulent practices in the home loan industry  
19 and investigate and prosecute cases involving mortgage  
20 fraud; and

21 (2) share information and resources necessary for the efficient  
22 administration of the tasks set forth in subdivision (1).

23 (e) With respect to any meeting of the task force:

24 (1) one (1) or more members of the task force may participate  
25 in the meeting; or

26 (2) the meeting may be conducted in its entirety;

27 by means of a conference telephone or similar communications  
28 equipment by which all persons participating in the meeting can  
29 communicate with each other. Participation by the means  
30 described in this subsection constitutes presence in person at the  
31 meeting.

32 (f) Beginning in 2008, not later than November 1 of each year,  
33 the task force shall report to the legislative council on the activities  
34 of the task force during the most recent state fiscal year. The  
35 report required under this subsection must include:

36 (1) information on the regulatory activities of each agency  
37 described in subsection (b), including a description of any:

38 (A) investigations conducted; or

39 (B) disciplinary actions taken or criminal prosecutions  
40 pursued;

41 with respect to the professions involved in originating, issuing,  
42 and closing home loans;

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(2) a description of any challenges:

(A) encountered by the task force during the most recent state fiscal year; or

(B) anticipated by the task force in the current state fiscal year; in

carrying out the duties set forth in subsection (d);

(3) any additional information required by the legislative council; and

(4) any recommendations by the task force for legislation necessary to assist the task force in carrying out the duties set forth in subsection (d).

A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

SECTION 56. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.

(b) As used in this SECTION, "mortgage transaction" has the meaning set forth in IC 24-4.5-8-104.

(c) Not later than November 1, 2008, the authority shall provide a report to the legislative council that includes the following:

(1) An identification of:

(A) new sources of funding that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions; or

(B) existing sources of funding that can be directed or redirected to assist Indiana homeowners in refinancing their existing mortgage transactions;

in order to prevent the foreclosure of the homes secured by homeowners' existing mortgage transactions.

(2) A plan for the rehabilitation of neighborhoods or communities in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. The plan required by this subdivision must include an identification of the following:

(A) The areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures, including any statistics or data used to identify the areas.

(B) New or existing sources of funding that can be directed or redirected to the proposed rehabilitation efforts.

(3) Any recommendations for legislation that the authority determines is needed to accomplish the objectives described in subdivisions (1) and (2).

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1 (4) Any other recommendations of the authority concerning:

2 (A) the prevention of mortgage foreclosures; or

3 (B) the rehabilitation of neighborhoods or communities  
4 adversely or disproportionately affected by mortgage  
5 foreclosures.

6 (d) The report to the legislative council required by this  
7 SECTION must be in an electronic format under IC 5-14-6.

8 (e) This SECTION expires January 1, 2010.

9 SECTION 57. [EFFECTIVE UPON PASSAGE] (a) As used in this  
10 SECTION, "commissioner" refers to the securities commissioner  
11 appointed under IC 23-19-6-1.

12 (b) As used in this SECTION, "director" refers to the director  
13 of the department of financial institutions appointed under  
14 IC 28-11-2-1.

15 (c) The commissioner and the director shall cooperate to  
16 determine the appropriate state agency or department to oversee  
17 the regulation of a person that is, has been, or may be subject to  
18 regulation, licensure, or registration under both:

19 (1) IC 23-2-5; and

20 (2) IC 24-4.5, as amended by this act.

21 (d) The commissioner and the director shall issue joint  
22 guidelines to address the appropriate regulation of a person  
23 described in subsection (c) not later than September 1, 2008. The  
24 joint guidelines issued under this subsection must include any  
25 recommendations for legislation needed to implement the  
26 appropriate regulation of a person described in subsection (c), as  
27 determined by the commissioner and the director.

28 (e) This SECTION expires January 1, 2010.

29 SECTION 58. [EFFECTIVE UPON PASSAGE] (a) As used in this  
30 SECTION, "board" refers to the real estate appraiser licensure  
31 and certification board created by IC 25-34.1-8-1.

32 (b) As used in this SECTION, "commission" refers to the  
33 Indiana real estate commission created by IC 25-34.1-2-1.

34 (c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the  
35 commission shall adopt rules to implement IC 25-34.1-8-10, as  
36 amended by this act, in the same manner as emergency rules are  
37 adopted under IC 4-22-2-37.1. Not later than May 1, 2008, the  
38 board shall make recommendations to the commission concerning  
39 the rules needed to implement IC 25-34.1-8-10, as amended by this  
40 act. The commission shall adopt any emergency rules under this  
41 SECTION not later than June 1, 2008. An emergency rule adopted  
42 under this SECTION:

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- 1           (1) takes effect on July 1, 2008; and
- 2           (2) expires on the earlier of:
- 3                (A) the date the rule is adopted by the commission under
- 4                IC 4-22-2-24 through IC 4-22-2-36; or
- 5                (B) January 1, 2010.
- 6           (d) This SECTION expires January 1, 2010.
- 7           SECTION 59. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1360, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 8, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1360 be amended to read as follows:

Replace the effective date in SECTION 4 with "[EFFECTIVE JULY 1, 2008]".

Page 3, line 13, strike "Before" and insert "**Except as provided in section 3.5 of this chapter, in addition to**".

Page 4, line 3, delete ":".

Page 4, line 4, delete "(1)".

Page 4, run in lines 3 through 4.

Page 4, line 7, delete "; and" and insert ".".

Page 4, delete lines 8 through 11.

Page 4, run in lines 7 through 12.

Page 4, between lines 36 and 37, begin a new paragraph and insert:  
 "SECTION 4. IC 6-1.1-5.5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2008]: **Sec. 3.5. (a) This section applies to a conveyance that:**

**(1) is a single family residential:**

**(A) first lien purchase money mortgage transaction; or**

**(B) refinancing transaction; and**

**(2) is closed after December 31, 2009.**

**(b) Not later than September 1, 2009, the department of local government finance shall establish and maintain an electronic system for the collection and storage of the sales disclosure form data set forth in section 5(a) of this chapter with respect to a conveyance to which this section applies.**

**(c) The system established by the department under this section must include a form that:**

**(1) is uniformly accessible in an electronic format to the**

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closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to:

(A) input the sales disclosure form data set forth in section 5(a) of this chapter with respect to the transaction; and

(B) submit the form electronically to a data base maintained by the department of local government finance.

(d) Subject to subsection (e), the department shall make the information stored in the data base described in subsection (c)(2)(B) accessible to:

(1) county auditors;

(2) county assessors;

(3) township assessors;

(4) the legislative services agency; and

(5) the department;

for the purposes authorized by section 3(c) and 3(d) of this chapter.

(e) If the sales disclosure form data submitted by a closing agent under subsection (c)(2)(B) includes the telephone number or the Social Security number of a party, the telephone number or the Social Security number is confidential."

Page 4, line 42, delete "following:" and insert "following".

Page 4, line 42, reset in roman "information:".

Page 5, delete lines 29 through 42.

Page 6, delete lines 1 through 22.

Page 6, line 23, reset in roman "(16)".

Page 6, line 23, delete "(21)".

Page 6, between lines 30 and 31, begin a new paragraph and insert:  
"SECTION 6. IC 6-1.1-5.5-6, AS AMENDED BY P.L.154-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) **Subject to subsection (c)**, the county auditor may not **refuse to** accept a conveyance document ~~if~~ **solely because:**

(1) the sales disclosure form signed by all the parties and attested as required under section 9 of this chapter is not included with the document; ~~or~~

(2) the sales disclosure form does not contain the information described in section 5(a) of this chapter; **or**

(3) **in the case of a conveyance to which section 3.5 of this chapter applies:**

(A) the closing agent fails to submit an electronic form in accordance with section 3.5(c)(2)(B) of this chapter; **or**

(B) the electronic form submitted by the closing agent

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**under section 3.5(c)(2)(B) of this chapter is incomplete or determined by any official or agency described in section 3.5(d) of this chapter to be inaccurate.**

(b) **Subject to subsection (c), the county recorder shall not may not refuse to record a conveyance document without evidence that the parties have filed a completed sales disclosure form with the county auditor, solely on the basis of any of the reasons set forth in subsection (a).**

(c) **Notwithstanding subsections (a) and (b), if any of the circumstances described in subsection (a)(1) through (a)(3) apply:**

**(1) a party to the conveyance who is required to file a sales disclosure form under section 3 of this chapter:**

**(A) is not relieved of the party's duty to file or correct the sales disclosure form required by this chapter; and**

**(B) is subject to the penalties set forth in section 12 of this chapter; and**

**(2) a closing agent who is required to submit an electronic sales disclosure form under section 3.5(c)(2)(B) of the chapter:**

**(A) is not relieved of the closing agent's duty to submit or correct the electronic sales disclosure form required by section 3.5(c)(2)(B) this chapter; and**

**(B) is subject to the penalties set forth in section 12(f) of this chapter.**

SECTION 7. IC 6-1.1-5.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) **Except as provided in subsection (b),** a person who signs a sales disclosure form shall attest in writing and under penalties of perjury that to the best of the person's knowledge and belief the information contained in the sales disclosure form is true and correct.

(b) **An electronic sales disclosure form that is submitted in accordance with section 3.5(c)(2)(B) of this chapter is subject to any verification requirements that the department may prescribe by rule adopted under IC 4-22-2.**

SECTION 8. IC 6-1.1-5.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) **Except as provided in subsection (f),** a party to a conveyance who:

**(1) is required to file a sales disclosure form under this chapter; and**

**(2) fails to file a sales disclosure form at the time and in the manner required by this chapter;**

**is subject to a penalty in the amount determined under subsection (b).**

**(b) The amount of the penalty under subsection (a) is the greater of:**

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- (1) one hundred dollars (\$100); or
- (2) twenty-five thousandths percent (0.025%) of the sale price of the real property transferred under the conveyance document.

(c) **Except as provided in subsection (f)**, the township assessor in a county containing a consolidated city, or the county assessor in any other county, shall:

- (1) determine the penalty imposed under this section;
- (2) assess the penalty to the party to a conveyance; and
- (3) notify the party to the conveyance that the penalty is payable not later than thirty (30) days after notice of the assessment.

(d) **Except as provided in subsection (f)**, the county auditor shall:

- (1) collect the penalty imposed under this section;
- (2) deposit penalty collections as required under section 4 of this chapter; and
- (3) notify the county prosecuting attorney of delinquent payments.

(e) **Except as provided in subsection (f)**, the county prosecuting attorney shall initiate an action to recover a delinquent penalty under this section. In a successful action against a person for a delinquent penalty, the court shall award the county prosecuting attorney reasonable attorney's fees.

(f) **A closing agent who:**

- (1) **is required to submit an electronic sales disclosure form under section 3.5(c)(2)(B) of this chapter; and**
- (2) **fails to submit the electronic sales disclosure form at the time and in the manner prescribed by the department of local government finance;**

**is subject to the penalty set forth in IC 6-1.1-12-43(h)."**

Page 7, line 40, delete "The" and insert "**Except as provided in subsection (d), the**".

Page 8, line 4, delete "For use in transactions involving a first lien purchase money" and insert "**As used in this subsection, "transaction" has the meaning set forth in section 43(a)(4) of this chapter. Not later than September 1, 2009, the department of local government finance shall establish and maintain an electronic system that automatically applies the deduction provided by section 1 of this chapter to a person entitled to the deduction provided by section 1 of this chapter. The system established by the department under this subsection must include a form that, with respect to a transaction that is closed after December 31, 2009:**

- (1) **is uniformly accessible in an electronic format to the closing agent (as defined in section 43(a)(2) of this chapter) in the transaction that is the basis for the person's eligibility for**

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the deduction provided by section 1 of this chapter; and

(2) allows the closing agent to:

(A) input the information concerning the transaction that is the basis for the person's eligibility for the deduction provided by section 1 of this chapter; and

(B) submit the form electronically to a data base maintained by the department of local government finance.

The department shall make the data base described in subdivision (2)(B) accessible to the county auditor in each county in Indiana. If the form submitted by a closing agent under subdivision (2)(B) is complete, the county auditor in the county in which the real property is located must accept the form and apply the deduction in accordance with section 17.8(c) of this chapter. The county auditor may not require the closing agent, the person entitled to the deduction, or any other person to provide any other information or form of identification for the person entitled to the deduction under section 1 of chapter to receive the deduction. If the form submitted by a closing agent under subdivision (2)(B) includes the telephone number or Social Security number of any individual, the telephone number or Social Security number is confidential."

Page 8, delete lines 5 through 15.

Page 8, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 10. IC 6-1.1-12-42.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 42.5. (a) This section applies to a transaction that:

(1) is a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction; and

(2) is closed after December 31, 2009.

(b) Not later than September 1, 2009, the department of local government finance shall establish and maintain an electronic system for the collection and storage of the following information concerning any of the following persons that have participated in or assisted with a transaction to which this section applies, or that will participate in or assist with a transaction to which this section applies:

(1) The name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) The name and registration number (under IC 23-2-5) of each originator involved in the transaction.

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- (3) The name and license number (under IC 25-34.1) of each:
- (A) principal broker; and
  - (B) salesperson or broker-salesperson, if any;
- involved in the transaction.
- (4) The name and certificate number (under IC 27-7-3) of each title insurance company involved in the transaction.
- (5) The name and license number (under IC 27-1-15.6) of each title insurance agent involved in the transaction.
- (6) The name and:
- (A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or
  - (B) license number (under IC 25-34.1) of each broker;
- who appraises the property that is the subject of the transaction.
- (7) The name of the mortgagee and, if the mortgagee is required to be licensed under IC 24-4.5-3-502, the license number of the mortgagee.
- (c) The system established by the department under this section must include a form that:
- (1) is uniformly accessible in an electronic format to the closing agent (as defined in section 43(a)(2) of this chapter) in the transaction; and
  - (2) allows the closing agent to:
    - (A) input the information described in subsection (b) with respect to each person described in subsection (b) that participates in or assists with the transaction, to the extent determinable; and
    - (B) submit the form electronically to a data base maintained by the department of local government finance.
- (d) Subject to subsection (e), the department shall make the information stored in the data base described in subsection (c)(2)(B) accessible to:
- (1) each entity described in IC 4-6-12-4; and
  - (2) the homeowner protection unit established under IC 4-6-12-2.
- (e) The department, a closing agent who submits under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:
- (1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

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(2) contained in the data base described in subsection (c)(2)(B);  
except to the extent required or authorized by state or federal law."

Page 9, line 20, delete "2008:" and insert "**2008, and before January 1, 2010:**".

Page 9, delete lines 21 through 24.

Page 9, line 25, delete "(2)" and insert "**(1)**".

Page 9, line 27, delete "the sales disclosure form prescribed by the" and insert "**if the transaction is a first lien purchase money mortgage transaction, the sales disclosure form prescribed by the department under IC 6-1.1-5.5-5, the form prescribed by the department under IC 6-1.1-20.9-3 to allow a person to claim the credit provided by IC 6-1.1-20.9-2, and the form prescribed by the department under section 2(a) of this chapter to allow a person to claim the deduction provided by section 1 of this chapter; or**

**(ii) if the transaction is a refinancing transaction, the form prescribed by the department under section 2(a) of this chapter to allow a person to claim the deduction provided by section 1 of this chapter."**

Page 9, delete lines 28 through 34.

Page 9, line 35, delete "subject to subsection (f),".

Page 9, line 36, delete "form" and insert "**forms**".

Page 9, line 37, delete "subject to subsection (f),".

Page 9, line 37, delete "form" and insert "**forms**".

Page 9, line 39, delete "(3)" and insert "**(2)**".

Page 9, line 39, delete "closing:" and insert "**closing,**".

Page 9, line 40, delete "(A)".

Page 9, run in lines 39 through 40.

Page 9, line 41, after "this" insert "**chapter by providing the customer with the form prescribed by the department under subsection (b).**".

Page 9, delete line 42.

Page 10, delete lines 1 through 6.

Page 10, line 8, delete "2008." and insert "**2008, and before January 1, 2010.**".

Page 10, line 8, delete "a form" and insert "**the forms**".

Page 10, line 9, delete "(d)(2)(B)" and insert "**(d)(1)(B)**".

Page 10, line 11, delete "file the signed sales" and insert "**file:**

**(A) the signed sales disclosure form with the appropriate county assessor and county auditor in accordance with IC 6-1.1-5-3;**

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**(B) the signed mortgage deduction form in accordance with section 2(a) of the chapter; and**

**(C) the signed homestead credit form in accordance with IC 6-1.1-20.9-3."**

Page 10, delete lines 12 through 13.

Page 10, between lines 16 and 17, begin a new paragraph and insert:

**"(f) This subsection applies to a transaction that is closed after December 31, 2009. The closing agent shall do the following:**

**(1) At the time of the closing, inform the customer of the deductions available under sections 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, and 34 of this chapter by providing the customer with the form prescribed by the department under subsection (b).**

**(2) As soon as possible after the closing, and within the time prescribed by the department of local government finance:**

**(A) for a transaction that is a first lien purchase money mortgage transaction:**

**(i) input the electronic sales disclosure form data and submit the electronic sales disclosure form in accordance with IC 6-1.1-5.5-3.5(c)(2);**

**(ii) input the information and submit the form described in IC 6-1.1-20.9-3(d)(2) to enable the customer to receive the credit provided by IC 6-1.1-20.9-2;**

**(iii) input the information and submit the form described in section 2(d)(2) of this chapter to enable the customer to receive the deduction provided by section (1) of this chapter; and**

**(iv) input the information and submit the form described in IC 6-1.1-12-42.5(c)(2); and**

**(B) for a refinancing transaction:**

**(i) input the information and submit the form described in section 2(d)(2) of this chapter to enable the customer to receive the deduction provided by section (1) of this chapter; and**

**(ii) input the information and submit the form described in IC 6-1.1-12-42.5(c)(2), to the extent applicable."**

Page 10, line 17, delete "(f)" and insert "(g)".

Page 10, line 20, delete "At the time of the closing, a customer may refuse to:".

Page 10, delete lines 21 through 27.

Page 10, line 28, delete "(g)" and insert "(h)".

Page 10, line 36, delete "(h)" and insert "(i)".

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Page 10, line 39, delete "or".

Page 10, between lines 39 and 40, begin a new line block indented and insert:

**"(2) with respect to a transaction that is closed after June 30, 2008, and before January 1, 2010, the closing agent's failure to file a document under subsection (e);**

**(3) with respect to a transaction that is closed after December 31, 2009, the closing agent's failure to input any information or submit any form described in subsection (f)(2); or".**

Page 10, line 40, delete "(2)" and insert "(4)".

Page 10, line 42, delete "(i)" and insert "(j)".

Page 11, line 4, delete "(g)." and insert "(h).".

Page 12, line 6, delete "For use in transactions involving a conveyance (as defined in" and insert **"As used in this subsection, "transaction" has the meaning set forth in section 43(a)(4)(A) of this chapter. Not later than September 1, 2009, the department of local government finance shall establish and maintain an electronic system that automatically applies the credit provided by section 2 of this chapter to a person entitled to the credit provided by section 2 of this chapter. The system established by the department under this subsection must include a form that, with respect to a transaction that is closed after December 31, 2009:**

**(1) is uniformly accessible in an electronic format to the closing agent (as defined in section 43(a)(2) of this chapter) in the transaction that is the basis for the person's eligibility for the credit provided by section 2 of this chapter; and**

**(2) allows the closing agent to:**

**(A) input the information concerning the transaction that is the basis for the person's eligibility for the credit provided by section 2 of this chapter; and**

**(B) submit the form electronically to a data base maintained by the department of local government finance.**

**The department shall make the data base described in subdivision (2)(B) accessible to the county auditor in each county in Indiana. If the form submitted by a closing agent under subdivision (2)(B) is complete, the county auditor in the county in which the real property is located must accept the form and apply the credit in accordance with section 2(f) of this chapter. The county auditor may not require the closing agent, the person entitled to the credit, or any other person to provide any other information or form of identification for the person entitled to the credit under section 2 of chapter to receive the credit. If the form submitted by a closing**

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**agent under subdivision (2)(B) includes the telephone number or Social Security number of any individual, the telephone number or Social Security number is confidential."**

Page 12, delete lines 7 through 42.

Delete pages 13 through 22.

Page 23, delete lines 1 through 4, begin a new paragraph and insert:

"SECTION 13. IC 20-24-8-5, AS AMENDED BY P.L.2-2006, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The following statutes and rules and guidelines adopted under the following statutes apply to a charter school:

- (1) IC 5-11-1-9 (required audits by the state board of accounts).
- (2) IC 20-39-1-1 (unified accounting system).
- (3) IC 20-35 (special education).
- (4) IC 20-26-5-10 and IC 20-28-5-9 (criminal history).
- (5) IC 20-26-5-6 (subject to laws requiring regulation by state agencies).
- (6) IC 20-28-7-14 (void teacher contract when two (2) contracts are signed).
- (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- (8) IC 20-28-10-14 (teacher freedom of association).
- (9) IC 20-28-10-17 (school counselor immunity).
- (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7, IC 20-28-8, IC 20-28-9, and IC 20-28-10.
- (11) IC 20-33-2 (compulsory school attendance).
- (12) IC 20-33-3 (limitations on employment of children).
- (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student due process and judicial review).
- (14) IC 20-33-8-16 (firearms and deadly weapons).
- (15) IC 20-34-3 (health and safety measures).
- (16) IC 20-33-9 (reporting of student violations of law).
- (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative observances).
- (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8, or any other statute, rule, or guideline related to standardized testing (assessment programs, including remediation under the assessment programs).
- (19) IC 20-33-7 (parental access to education records).
- (20) IC 20-31 (accountability for school performance and improvement).
- (21) Beginning with the school year that begins in the calendar year beginning January 1, 2010, IC 20-30-5-19**

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(instruction concerning consumer transactions and personal financial responsibility).

SECTION 14. IC 20-30-5-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 19. (a) Beginning with the school year that begins in the calendar year beginning January 1, 2010, each school corporation (including each charter school) and each nonpublic school that voluntarily has become accredited under IC 20-19-2-8 shall include in its curriculum for all students in grades 9 through 12 instruction designed to:**

- (1) increase students' awareness of certain consumer transactions, including mortgage transactions; and**
- (2) foster personal financial responsibility.**

**(b) A school corporation (including a charter school) and a nonpublic school that voluntarily has become accredited under IC 20-19-2-8 may meet the requirements of subsection (a) by:**

- (1) integrating the instruction described in subsection (a) in its required mathematics curriculum; or**
- (2) conducting a separate class or seminar that includes the instruction described in subsection (a).**

**(c) A person may not receive a high school diploma from a school subject to this section unless the person has received the instruction required by this section.**

**(d) The department, in collaboration with the department of financial institutions established by IC 28-11-1-1, shall develop guidelines and the state board shall adopt rules under IC 4-22-2 to assist teachers assigned to provide the instruction required by this section."**

Page 26, line 9, delete "However, if the commissioner seeks evidence of".

Page 26, delete lines 10 through 19.

Page 26, line 22, delete "may" and insert "**shall**".

Page 40, line 18, delete "'fully indexed rate' means:" and insert "**'creditworthiness', with respect to a prospective borrower, means those factors likely to affect the prospective borrower's ability to repay a loan at the loan's fully indexed rate, including the following:**

- (1) The prospective borrower's present and future:**
  - (A) income, not including overtime payments, seasonal compensation, or other irregular income;**
  - (B) expenses, including property taxes and insurance payments owed in connection with the property that is the**

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subject of the loan;

(C) assets; and

(D) liabilities.

(2) The prospective borrower's credit history.

(3) Any other factor likely to affect the prospective borrower's ability to repay the loan at the loan's fully indexed rate.

(b) As used in this section, "fully indexed rate means:".

Page 40, between lines 29 and 30, begin a new paragraph and insert:

"(c) For purposes of this section, a person conducts a "reasonable inquiry" into a prospective borrower's creditworthiness if the person:

(1) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(2) obtains information about the prospective borrower through:

(A) a current or past employer of the prospective borrower;

(B) public records; or

(C) any other legal or commercially reasonable means.".

Page 40, line 30, delete "(b)" and insert "(d)".

Page 41, line 12, delete "borrowers." and insert "borrowers, unless the personal information is:

(A) included as part of:

(i) an application form; or

(ii) a document that is used in connection with an application process or an enrollment process;

(B) used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit; or

(C) used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.".

Page 41, line 19, delete "borrower, without reasonable grounds to believe" and insert "borrower without first conducting a reasonable inquiry concerning the prospective borrower's creditworthiness.".

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Page 41, delete lines 20 through 28.

Page 41, line 29, delete "(c)" and insert "(e)".

Page 41, line 29, after "subsection" delete "(b)" and insert "(d)".

Page 44, delete lines 5 through 6.

Page 48, line 30, delete "Except that not more than twenty-five percent (25%) of the".

Page 48, delete line 31.

Page 48, line 32, delete "transaction may be precomputed, this" and insert "This".

Page 48, run in lines 30 through 32.

Page 50, delete lines 10 through 42.

Page 51, delete lines 1 through 16.

Page 52, line 11, delete "transaction. The creditor or mortgage servicer shall" and insert **"transaction and with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge"**.

Page 52, line 12, delete "respond to".

Page 52, line 13, delete "calendar" and insert **"business"**.

Page 52, line 14, after "offer." insert **"The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer."**

Page 53, line 42, delete "Except that not more than twenty-five percent (25%) of the".

Page 54, delete line 1.

Page 54, line 2, delete "transaction may be precomputed, this" and insert "This".

Page 53, run in line 42 through page 54, line 2.

Page 56, delete lines 27 through 42.

Page 57, delete lines 1 through 34.

Page 58, line 7, reset in roman "or".

Page 58, line 8, delete ";" and insert ".".

Page 58, delete lines 9 through 13.

Page 59, line 8, delete "transaction. The creditor or mortgage servicer shall" and insert **"transaction and with respect to which any installment or minimum payment due is delinquent for at least ten**

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**(10) days. The creditor, servicer, or the creditor's agent shall acknowledge".**

Page 59, line 9, delete "respond to".

Page 59, line 10, delete "calendar" and insert "**business**".

Page 59, line 11, after "offer." insert "**The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer.**".

Page 59, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 39. IC 24-4.5-3-402, AS AMENDED BY P.L.217-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 402. (1) Except as provided in IC 24-9-4-3 with respect to a high cost home loan (as defined in IC 24-9-2-8), with respect to a consumer loan, other than one pursuant to a revolving loan account or one on which only loan finance charges are payable prior to the time that the final scheduled payment is due, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. This section does not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

(2) For the purposes of this section, "terms of the refinancing" means:

(a) in the case of a fixed-rate consumer loan, the individual payment amounts, the charges as a result of default by the debtor, and the rate of the loan finance charge; and

(b) in the case of a variable rate consumer loan, the method used to determine the individual payment amounts, the charges as a result of default by the debtor, the method used to determine the rate of the loan finance charge, the circumstances under which the rate of the loan finance charge may increase, and any limitations on the increase in the rate of the loan finance charge.

(3) If a consumer loan is made under the authority of the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3802 et seq.), the note evidencing the mortgage must contain a reference to the applicable federal law.

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**(4) This section does not apply to a first lien mortgage transaction."**

Page 60, line 11, delete "Except that not more than twenty-five percent (25%) of the".

Page 60, delete line 12.

Page 60, line 13, delete "transaction may be precomputed, this" and insert "This".

Page 60, run in lines 11 through 13.

Page 61, line 24, before "Mortgage" insert "**First Lien**".

Page 61, delete lines 25 through 42, begin a new paragraph and insert:

**"Sec. 102. Except as provided in section 103 of this chapter, the following do not apply to a first lien mortgage transaction under this chapter:**

- (a) IC 24-4.5-1.**
- (b) IC 24-4.5-2.**
- (c) IC 24-4.5-3.**
- (d) IC 24-4.5-4.**
- (e) IC 24-4.5-5.**
- (f) IC 24-4.5-6.**
- (g) IC 24-4.5-7.**

**Sec. 103. (1) The following apply to first lien mortgage transactions under this chapter:**

- (a) IC 24-4.5-1-101 through IC 24-4.5-1-108 and IC 24-4.5-1-201 through IC 24-4.5-1-302.**
- (b) IC 24-4.5-2-104, IC 24-4.5-2-105, IC 24-4.5-2-107, IC 24-4.5-2-111, IC 24-4.5-2-208, IC 24-4.5-2-209, IC 24-4.5-2-301, IC 24-4.5-2-407, IC 24-4.5-2-413 through IC 24-4.5-2-415, IC 24-4.5-2-501, and IC 24-4.5-2-502.**
- (c) IC 24-4.5-3-101, IC 24-4.5-3-103, IC 24-4.5-3-104, IC 24-4.5-3-106 through IC 24-4.5-3-109, IC 24-4.5-3-207, IC 24-4.5-3-208, IC 24-4.5-3-301, IC 24-4.5-3-403 through IC 24-4.5-3-405, IC 24-4.5-3-407, IC 24-4.5-3-408, IC 24-4.5-3-503 through IC 24-4.5-3-505, IC 24-4.5-3-506, IC 24-4.5-3-507, IC 24-4.5-3-512, IC 24-4.5-3-606, IC 24-4.5-3-701.**
- (d) IC 24-4.5-4-101 through IC 24-4.5-4-305.**
- (e) IC 24-4.5-5-101 through IC 24-4.5-5-302.**
- (f) IC 24-4.5-6-101, IC 24-4.5-6-103 through IC 24-4.5-6-202, and IC 24-4.5-6-204.**

**(2) A reference to a consumer loan in any provision set forth in paragraph (1) shall be considered a reference to a first lien**

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mortgage transaction for purposes of this chapter.

**Sec. 104.** As used in this chapter, "tablefunding" means a transaction in which:

- (a) a person closes a loan in the person's own name as a mortgagee with funds provided by others; and
- (b) the loan is assigned simultaneously to the mortgage lender providing the funding not later than one (1) business day after the funding of the loan.

**Sec. 105.** As used in this chapter, "creditor" means a person:

- (a) who regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

The term does not include a person who is initially payable as mortgagee in a table funding transaction.

**Sec. 106.** Unless a person:

- (a) is:
  - (i) a supervised financial organization (as defined in IC 24-4.5-1-301(20));
  - (ii) a collection agency licensed under IC 25-11-1; or
- (b) has first obtained a license from the department under this chapter;

the person shall not regularly engage in Indiana as a creditor in first lien mortgage transactions. If a person violates this section, IC 24-4.5-4.5-202(2) applies to any first lien mortgage transaction resulting from the violation.

**Sec. 107.** To become licensed under this chapter, a person must comply with the licensing requirements set forth in IC 24-4.5-3-503.

**Sec. 108.** (1) An applicant for a license under this chapter is subject to a license application fee established by the department under IC 28-11-3-5.

(2) A person licensed under this chapter is subject to:

- (1) license renewal fees established by the department under IC 28-11-3-5; and
- (2) examination fees established by the department under IC 28-11-3-5 to fund the department's regulation of the person's first lien mortgage business."

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Delete pages 62 through 64.

Page 65, delete lines 1 through 40.

Page 72, line 21, delete "of:" and insert **"of IC 24-9 (concerning home loans)"**.

Page 72, delete lines 22 through 23.

Page 72, run in lines 21 through 24.

Page 77, line 9, delete "reasonable grounds for determining that" and insert **"first conducting"**.

Page 77, delete line 10.

Page 77, line 11, delete "on".

Page 77, run in lines 9 through 11.

Page 77, line 19, delete "for a determination made under this section,".

Page 77, line 19, after "borrower" delete "for".

Page 77, delete line 20.

Page 77, line 21, delete "this section later defaults on the" and insert **"later defaults on a"**.

Page 77, delete lines 23 through 42.

Page 78, delete lines 1 through 4.

Page 78, line 15, delete "A creditor, a servicer, or the creditor's agent shall respond" and insert **"This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge"**.

Page 78, line 16, delete "to".

Page 78, line 17, delete "calendar" and insert **"business"**.

Page 78, line 17, after "offer." insert **"The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer."**.

Page 78, delete lines 26 through 42, begin a new paragraph and insert:

**"SECTION 46. IC 24-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.**

**(b) If a creditor presents evidence that the creditor:**

**(1) followed commercially reasonable practices in determining**

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the borrower's debt to income ratio; and

**(2) conducted a reasonable inquiry into a prospective borrower's creditworthiness under IC 24-9-3-1.1;**

there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. ~~For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.~~

(c) **For purposes of subsection (b)(1),** commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393."

Page 79, delete lines 1 through 28.

Page 83, line 5, delete "However, if".

Page 83, delete lines 6 through 16.

Page 83, delete lines 20 through 42.

Delete page 84.

Page 85, delete lines 1 through 35.

Page 85, line 38, after "to" insert **"file, submit, or"**.

Page 85, delete line 42.

Page 86, delete lines 1 through 5.

Page 86, line 9, delete "determination that a home loan is suitable for a" and insert **"reasonable inquiry into a prospective borrower's creditworthiness.)"**.

Page 86, delete line 10.

Page 87, delete lines 38 through 42.

Page 88, delete lines 1 through 9.

Page 90, delete lines 3 through 9.

Renumber all SECTIONS consecutively.

(Reference is to HB 1360 as printed January 25, 2008.)

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1360 be amended to read as follows:

Page 79, line 35, delete "to:" and insert "**to**".

Page 79, line 36, delete "(1)".

Page 79, run in lines 35 through 36.

Page 79, line 40, delete "amended;" and insert "**amended.**".

Page 79, delete lines 41 through 42.

Page 80, delete lines 1 through 4.

Page 80, line 19, delete "Not" and insert "**(a) Subject to subsection (b), not**".

Page 80, between lines 28 and 29, begin a new paragraph and insert:

**(b) A borrower may waive the right to receive the closing documents with respect to a home loan by providing a written notice of waiver to the settlement service provider at or before the time of closing.**

**(c) If the terms of the home loan set forth in the closing documents made available to the borrower under subsection (a) differ from the terms of the home loan presented to the borrower at the time of the closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract. For purposes of this subsection, "terms", with respect to a home loan, include any of the following:**

- (1) The total loan amount.**
- (2) The loan's rate, including the trigger rate.**
- (3) Points and fees.**
- (4) Payment amounts and schedules.**
- (5) The term or duration of the loan.**
- (6) Prepayment penalties, if any.**
- (7) Acceleration provisions.**
- (8) Servicing of the loan.**
- (9) Other provisions concerning the rights and responsibilities of the parties to the home loan.**

**Sec. 6. (a) A settlement service provider is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the settlement service provider fails to:**

- (1) provide a prospective borrower with the notice required by section 4 of this chapter; or**
- (2) make closing documents available to a borrower as required by section 5 of this chapter, unless the borrower has**

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waived the borrower's right to receive the closing documents under section 5(b) of this chapter.

(b) A penalty described in subsection (a):

(1) may be enforced by the state agency that has administrative jurisdiction over the settlement service provider in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the property tax replacement fund.

(c) A settlement service provider is not liable for any other damages claimed by a customer because of the closing agent's failure to comply with this chapter."

(Reference is to HB 1360 as printed January 25, 2008.)

MURPHY

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